123-527

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1884.

~~No. 316.~~ 44

EDWIN C. LITCHFIELD, ADMINISTRATOR OF GRACE H. LITCHFIELD, DECEASED, PLAINTIFF IN ERROR,

vs

GEORGE CRANE, ADMINISTRATOR OF EDWARD K. GOODNOW, DECEASED.

IN ERROR TO THE SUPREME COURT OF THE STATE OF IOWA.

FILED SEPTEMBER 26, 1884.

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vs

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IN ERROR TO THE SUPREME COURT OF THE STATE OF IOWA.

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1 On the 17th day of November, 1883, the def't in error (pl'ff below) filed in the office of the clerk of the supreme court of Iowa an abstract of the record, the same being in the words and figures following, to wit:

Appellant's Abstract of Record.

Supreme Court of Iowa. December Term, Des Moines, A. D. 1883. In Equity.

EDWARD K. GOODNOW *vs.* GRACE H. LITCHFIELD.

Appeal from the Webster county district court.

George Crane, for appellant; C. H. Gatch, for appellee.

On the 5th of August, 1876, plaintiff filed his petition in said district court of Webster county, stating his cause of action as follows:

Par. 1st. The said Edward K. Goodnow, plaintiff herein, respectfully represents unto this court that the Iowa Homestead Company is a corporation duly organized and existing under and by virtue of the laws of the State of Iowa; that on or about the year A. D. 1863, the said homestead company received from the Dubuque & Sioux City Railroad Company, a corporation also existing under and by virtue of the laws of Iowa, a deed, duly signed, executed, and delivered by said railroad company, purporting to convey in fee-
2 simple absolute to the said homestead company the following-described real estate—that is to say:

The west half of northeast quarter, southeast quarter and west half of section 19, township 89, range 27; south half section 1, township 87, range 29; all of section 35, township 88, range 29; northwest quarter of northwest quarter of section 5, township 88, range 28; east half section 5, all of section 7; west half section 15, township 88, range 27, all in Webster county, Iowa; a copy of which deed, marked Exhibit A, is hereto annexed and made part of this petition.

Par. 2d. Plaintiff further avers that from and after the execution and delivery of said deed as aforesaid till the year A. D. 1873, the said homestead company honestly and in good faith believed that it was the absolute owner of and held a good and valid title to the land aforesaid; but in the year A. D. 1873 the Supreme Court of the United States, in a suit therein pending for the purpose of testing the right and title of said homestead company to said lands, decided finally that said company was not the owner thereof and never had any right or title thereto, since which time said company has not claimed to be the owner of said land.

Par. 3d. Plaintiff further avers that during the continuation of such belief and claim of ownership the said homestead company gave or delivered over to Webster county, a municipal corporation organized and existing under the laws of the State of Iowa, and within whose territorial limits said lands are situated, the taxes duly

assessed and levied by said county upon said lands—that is to say, the following amounts for the following years, respectively:

For the year 1864	$280 35
For the year 1865	458 55
For the year 1866	555 80
For the year 1867	323 75
For the year 1868	395 65
For the year 1869	513 00
For the year 1870	598 25
For the year 1871	694 15

And took from said county receipts showing the amounts so handed over to said county.

Par. 4th. Plaintiff further avers that the taxes so assessed and levied by said county on and against said lands became and were a valid and binding lien thereon in favor of said county, which said lien was paramount to all other liens or incumbrances thereon; that long prior to the assessment and levy of said taxes upon said lands the said Edwin C. Litchfield, defendant herein, became and was the owner thereof, and ever since has been such owner, but of the defendant's said ownership said homestead company had no knowledge or notice at the time of receiving its deed therefor, nor till about the year 1873, and long after the payment of said taxes.

Par. 5th. Plaintiff further avers that said defendant has never paid to said county the taxes aforesaid or any part or parcel thereof.

Par. 6th. Plaintiff further avers that said county has always hitherto refused and still refuses to refund to said homestead company or its assigns the taxes so given or delivered over to said county by said homestead company, as hereinbefore alleged, and said county has always hitherto refused and still refuses to take any steps whatever to collect the aforesaid taxes from the said defendant or any part thereof, or to enforce the lien given by the law upon said land to secure the due payment thereof.

Par. 7th. Plaintiff further avers that said county has the legal right and power and is in duty bound to collect the taxes aforesaid from the defendant, who was the legal owner of said lands at the time said taxes were levied against the same, and was justly bound to pay the said taxes to said county.

4 Par. 8th. Plaintiff further avers that the said Iowa Homestead Company has assigned, transferred, and set over to the said plaintiff all right, title, claim, demand, or cause of action, either in law or equity, which said company may have had against said Webster county or against the said defendant or any other person on account of or by reason of the payment to said county of the aforesaid taxes; a copy of which assignment is hereto annexed, marked Exhibit B, and made a part of this petition.

Par. 9th. Wherefore the plaintiff prays that an account be taken of the amount of taxes that said defendant should pay, and that a decree for the amount so found to be due be entered up against said defendant in the name of the plaintiff, or in the name of said Webster county, for the use and benefit of plaintiff, and made a lien on

the lands hereinbefore described; that said lands be ordered to be sold to pay off said decree; and that plaintiff have such other and further relief in the premises as equity and good conscience may require, and to this court may seem meet.

GEORGE CRANE,
Attorney for Plaintiff.

And afterwards, on nineteenth January, A. D. 1877, of said court, the defendant filed her answer in words and figures following:

Comes now the defendant, Grace H. Litchfield, and answers the petition of plaintiff herein, and for answer—

First. Admits that the Iowa Homestead Company is a corporation duly organized and existing under and by virtue of the laws of the State of Iowa; that in or about the year 1863 the said homestead company received from the Dubuque and Sioux City Railroad Company a deed, duly signed and executed, purporting to convey in fee-simple absolute to said homestead company all the lands in said petition described.

5 That in the year A. D. 1873 the Supreme Court of the United States, in a suit therein pending, for the purpose, among others, of testing the right and title of said homestead company to said lands, decided finally that said company was not the owner thereof and never had any right or title thereto; that this defendant became and was the owner of said lands prior to the date of any of said alleged assessments and levies of taxes thereon; that this defendant has not paid the said county said taxes or any part thereof.

That said county of Webster has never taken any steps whatever to collect said taxes or any part thereof from this defendant personally, but as to whether or not it has ever refused so to do, or has ever refused to take steps to enforce any lien for the payment thereof, she has not sufficient knowledge or information to form a belief; therefore denies the same; and, further answering, defendant says—

Second. That of the averment in said petition contained that the said homestead company, from and after the execution and delivery of said deed as aforesaid until the year A. D. 1873, or during any part of said time, honestly and in good faith believed that it was the absolute owner of or held a good and valid title to said lands or any part thereof, she has not sufficient knowledge or information to form a belief, and therefore denies the same; that of the averment that plaintiff paid the taxes or any part thereof for the years 1864 to 1871, both inclusive, or for any one of said years, as in said petition alleged, she has not sufficient knowledge or information to form a belief, and therefor denies the same; that of the averment that said county of Webster has always hitherto refused and still refuses to refund to the said Iowa Homestead Company or its assigns the taxes so given or delivered over to said county by said homestead company, as in said petition alleged, she has not sufficient knowledge or information to form a belief, and therefore denies the same.

6 That of the averment that said homestead company has assigned, transferred, and set over unto the said plaintiff al

right, title, claim, demand, or cause of action, either in law or equity, which said company may have had against said county of Webster or this defendant, or any other person on account of or by reason of the payment to said county of the aforesaid taxes, she has not sufficient knowledge or information to form a belief, and therefore denies the same; and, further answering—

Third. Defendant denies each and every other allegation in said petition contained and not herein before expressly admitted; and, further answering, defendant says—

Fourth. That in an action in which the said homestead company was plaintiff and this defendant, her grantor, the Des Moines Navigation and Railroad Company and others, were defendants, commenced in the district court in and for the county of Webster and State of Iowa, and finally determined in and by the Supreme Court of the United States, the homestead company, prior to the date of said assignment of said alleged cause of action, asserted and maintained a right of recovery of the defendant of the same taxes the recovery of which is sought herein; that one of the issues made by the pleadings and determined by the proofs in said action was as to its right to recover the same, and that it was therein determined and adjudged finally by said last-mentioned court, at the December term thereof, A. D. 1872, that the said company was not entitled to recover the same or any part thereof, which said determination and judgment has never been in any manner set aside, vacated, or modified, but still remains in full force; and, further answering, defendant says—

Fifth. That if any cause of action ever accrued to plaintiff or his said assignor, the said homestead company, against the defendant for the recovery of any of said taxes or any sum of money on account thereof for any of said years, except those for the year 1871,
7 the same did not accrue at any time within five years from next before the commencement of this action, and is, therefore, barred by the statute of limitations; and, further answering, defendant says—

Sixth. That the said homestead company, if it paid said taxes or any part thereof, paid the same voluntarily and without the request, knowledge, or consent of this defendant, or any one having any right to or interest in said lands, and with full knowledge of all the facts with respect to the claim of title thereto by this defendant.

WRIGHT, GATCH & WRIGHT,
Attorneys for Defendant.

Afterwards, July 29th, 1880, the defendant filed an amendment to her answer in words and figures following:

Comes now the defendant, Grace H. Litchfield, and, by leave of the court first had, amends her answer herein, and for amendment says:

5th. And, further answering, saith that during all of said years and for the year 1862, until and including the year 1871, the title of said Edwin C. Litchfield and his grantor was constantly denied by the United States and the State of Iowa and their officers and

agents, and said land claimed by them as belonging to other claimants, either under the so-called "railroad grant of May 15, 1856," or the so-called "school land grant of September 4, 1841," or to pre-emption and homestead claimants under the pre-emption and homestead laws of the United States; that they were so claimed as having passed by said railroad grants and as belonging to the claimants thereunder until the decision of the Supreme Court of the United States in the case of Wolcott *vs.* The Des Moines Navigation and Railroad Company, reported in 6th Wallace, 681; and that subsequently to said decision the United States continued to claim title to all said lands, either under said school land grant or as part of the public domain, and that the same had
8 not yet by certification from the United States to the said State of Iowa under the joint resolution of Congress of March 2, 1861, and the act of July 22, 1862, been indentified as part of the lands passed thereunder or otherwise so separated, pursuant to said acts, from the mass of lands constituting the public domain as to be subject to taxation, and that by reason of such denial of title to said Litchfield and his grantors and such claim of adverse title to such lands as being in other claimants, either under said railroad grant or said school land grant or as constituting part of the public domain, and as such subject to pre-emption and homestead entry, said Litchfield has been deprived of the occupancy of said land by the adverse occupancy thereof by homestead, pre-emption, and other claimants, the land having been greatly damaged by the removal of timber therefrom and waste otherwise committed thereon by such occupants, and said Litchfield has been put to great expense and loss of time and labor in asserting and maintaining her title to said land by long and expensive litigation.

8th. From and prior to the year 1859 until the present time the defendant, Grace H. Litchfield, has been and still is a married woman—the lawful wife of Edwin C. Litchfield—and during all of that time has lived with and still lives with Edwin C. Litchfield in that relation.

WRIGHT, GATCH & WRIGHT,
Attorneys for Defendant.

And afterwards, June 14th, 1881, the defendant filed an amendment to her answer as follows:

Comes now the defendant, Grace H. Litchfield, and, by leave of the court first obtained, amends her answer herein, and for such amendment says—

That ever since the year 1860 this defendant has been a citizen and resident of the State of New York, and that if any cause of action ever accrued to plaintiff or *his* assignee against
9 defendant for the recovery of said alleged taxes or any sum of money on account thereof for any of said years, the same did not accrue at any time within six years next preceding the commencement of this action, but did accrue on or before the — day of ——, 18—, and is therefore barred by the statute of limitations of the State of New York.

BARCROFT, GATCH & McCAUGHAN,
Attorneys for Defendant.

And afterwards, June 21st, 1882, the plaintiff filed an amendment to his petition in the following words:

And now comes the plaintiff, Edward K. Goodnow, and, by leave of court first had and obtained, for amendment and addition to his petition heretofore filed in this case says that the defendant, Grace H. Litchfield, died in the month of October, A. D. 1881, leaving her surviving husband, Edwin C. Litchfield; also Francis Turnbull, wife of Lawrence Turnbull; Edward H. Litchfield and his wife, Madeline S. Litchfield; Henry P. Litchfield, and Grace D. Litchfield, her only heirs-at-law; that each and all of the parties above named claim to have some estate or interest in the lands mentioned in the original petition filed in this suit.

Wherefore plaintiff asks that said Edwin C. Litchfield, Francis Turnbull, Lawrence Turnbull, Edward H. Litchfield, Madeline S. Litchfield, Henry P. Litchfield, and Grace D. Litchfield be made defendants to this suit, and that they and each of them be forever barred and foreclosed of all equity and right of redemption in and to said land and every part thereof, and that plaintiff have such other — further relief against said parties as may be just and equitable.

GEORGE CRANE,
Attorney for Plaintiff.

That afterwards the above-named defendants, Edwin C. Litchfield, Francis Turnbull, Lawrence Turnbull, Edward H. Litchfield and his wife, Madeline S. Litchfield; Henry P. Litchfield, and Grace D. Litchfield, were duly and legally served with an original notice of the pendency of this suit.

And afterwards, the death of said Grace H. Litchfield having been suggested of record, the administrator of her estate, Edwin C. Litchfield, was duly made defendant to this suit; and thereupon said administrator filed his answer in the words following, to wit:

Comes now the defendant, Edwin C. Litchfield, administrator of Grace H. Litchfield, and by leave of court amends her answer herein as follows:

1st. He says that plaintiff is not the real party in interest herein, and is neither the legal nor equitable owner of said alleged cause of action, the same not having been assigned to him by said pretended assignment.

2d. Says it is not true that the question as to title and ownership of said lands as between the respective grantors of plaintiff and defendant was not finally decided until 1873, and withdraws so much of his answer heretofore filed as either expressly or by implication admits that the same was finally decided, and avers that the cause was definitely and finally decided at the December term, 1866, of the Supreme Court of the United States, in the cases of Wolcott *vs.* Des Moines Navigation and Railroad Company and Burr *vs.* same company, reported in 5 Wallace, 681 and 689.

C. H. GATCH,
Attorney for Defendant.

On May 31st, 1881, plaintiff filed the following amendment to his petition:

And now comes the plaintiff, Ed. K. Goodnow, and for addition and amendment to his petition in this suit says that since the
11 commencement of this suit the said Grace H. Litchfield has died, and Edwin C. Litchfield has been duly appointed administrator of her estate and has entered upon the discharge of his duties as such administrator.

Plaintiff therefore asks that said Edwin C. Litchfield be made party defendant to this suit; that he have judgment against him as such administrator as aforesaid for the sum of ten thousand dollars and costs of suit.

GEORGE CRANE,
Attorney for Plaintiff.

And afterwards the plaintiff filed his reply to said answer in the following words:

And now comes the plaintiff in the above-entitled suit, and for reply denies each and every allegation contained in the answers and amendments thereto filed in the cause by the defendant, and prays relief as heretofore prayed.

GEORGE CRANE,
Attorney for Plaintiff.

Afterwards, on the — day of October, 1883, this cause coming on for hearing, the same was submitted to the court on the pleadings and the following agreed statement of facts and evidence, to wit:

Agreed Statement of Facts.

In the District Court of Webster Co., Iowa.

EDWARD K. GOODNOW *vs.* GRACE H. LITCHFIELD and Others.

For the benefit of all the parties hereto and for all the purposes of this suit the following facts and statements are admitted and the following stipulations made:

12 1st. The statements contained in the first and second paragraphs of plaintiff's original petition herein are admitted to be true.

2d. In the year 1863 and thereafter, until the year 1873, the defendant, Grace H. Litchfield, was the owner in fee-simple of the lands mentioned and described in plaintiff's petition.

3d. The defendant, Grace H. Litchfield, is now and always has been a non-resident of the State of Iowa.

4th. The county of Webster duly and legally levied and assessed upon the lands aforesaid for the years named the several amounts of taxes set forth in Exhibit A, hereto attached and made part hereof, and said several assessments were made by said county to unknown owners.

5th. The Iowa Homestead Company paid to said county the several amounts of taxes mentioned in said Exhibit A at the several

dates therein set forth, and took from said county receipts for the sums of money so paid, in the form following:

TREASURER'S OFFICE, WEBSTER COUNTY, IOWA.
FORT DODGE, —— —, 1867.

Received of W. J. Barney, agent for the Iowa Homestead Company, — dollars in full of the following taxes for the year 1866 on the annexed real estate.

Description of Lands.

Town lots.	Lot.	Block.	Sec.	T.	R.	Acres.	Kind of tax.	Int.
							County. State. Co. school. Bond. District. B. C. & R.	

6th. At the times of said several payments of taxes as aforesaid by said homestead company said company did not know or believe that defendant was the owner of said lands, but knew that she claimed to own them.

13

7th. Said several sums of money were so paid to said county without any actual demand or request by said county therefor.

8th. Said defendant has never paid said taxes to said county, or any part thereof.

9th. Said county has always hitherto refused to refund to said homestead company or to said plaintiff Goodnow the taxes paid as aforesaid, although demanded.

10th. On or about the 14th day of June, 1876, said Iowa Homestead Company executed and delivered to said plaintiff, Edward K. Goodnow, a contract, of which Exhibit B, hereto attached and made a part hereof, is a true copy, and to be received in evidence herein with like effect as the original, subject to all objections that might be made to the original, if offered, and that the lands mentioned and described in the plaintiff's petition are a part of the lands mentioned and referred to in said Exhibit B, and are also a part of the lands purported to be conveyed by the Dubuque and Sioux City Railroad Company to the Iowa Homestead Company by the deed given to said company in the year 1863, and also a part of the lands in controversy in the said case of the Iowa Homestead Company *vs.* The Des Moines Navigation and Railroad Company *et al.*, reported in 17 Wallace, page 153.

And it is hereby stipulated—

1st. That the reports of the cases of the Dubuque & Pacific Railroad Company *vs.* Edwin C. Litchfield, 23 Howard, 66, and the Iowa

Homestead Company *vs.* The Des Moines Valley Railroad Company, 17 Wallace, 153, as therein reported, shall be received as evidence and considered by the court as far as material to any of the issues herein.

14 2d. That the printed transcript of the record in the Supreme Court of the United States in said case of the Homestead Company *vs.* Des Moines Valley Railroad Company may be received as evidence and considered by the court with like effect as the original might be, so far as material to any of the issues herein, either party having the right to offer in evidence such portions as he or she may deem relevant and material.

3d. That Exhibit C, hereto attached, is a true copy of the decree entered by the Supreme Court of the United States in said case of The Iowa Homestead Company *vs.* The Des Moines Valley Railroad Company, reported in 17 Wallace, p. 153.

4th. That the printed copy of the record in the case of Edwin C. Litchfield *vs.* Webster County and Jonathan Hutchinson, in the United States circuit court, district of Iowa, herewith filed, and marked Exhibit D, may be received as evidence and considered, so far as relevant or material to any of the issues herein.

5th. That the costs of Exhibit A shall be taxed as part of the costs of this suit.

WRIGHT, GATCH & WRIGHT,
Attorneys for Defendant Litchfield.
GEORGE CRANE,
Attorney for Plaintiff.

EXHIBIT A, referred to in foregoing agreement as to facts, and showing amounts and dates of payment of taxes on the lands mentioned and described in the petition, and for what years paid.

		Date of payment.	Amount paid.
For the year	1864	January 15, 1865	$226 11
"	1865	November, 25, 1865	342 45
"	1866	February 28, 1867	462 05
15 "	1867	July 1, 1868	319 14
"	1868	April 26, 1869	315 62
"	1869	February 28, 1870	391 22
"	1870	February 28, 1871	490 32
"	1874	February 29, 1872	688 12

EXHIBIT B, referred to in the foregoing agreement as to facts.

"This agreement witnesseth that, in consideration of the covenants and agreements hereinafter mentioned and to be kept, observed, and performed by E. K. Goodnow, of the city and State of New York, the Iowa Homestead Company, a corporation duly organized and existing under and by virtue of the laws of the State of Iowa, has assigned, transferred, conveyed, and set over, and by these presents does assign, transfer, convey, and set over, unto the said E. K. Goodnow all right, title, claim, or demand, or cause of action, either in

law or equity, which said homestead company may have against Webster county, State of Iowa, or against any person, company, or other corporation on account of or by reason of the payment to said county of any taxes assessed or levied by said county upon lands situated within the territorial limits thereof, and in which said homestead company heretofore claimed to have an interest, and especially all claims, demands, and rights of action in law or equity which said homestead company may have or hold against any person, company, county, or other corporation by virtue of said homestead company's having paid or handed over to said Webster county the taxes assessed or levied by said county upon the lands or any part thereof formerly claimed by the Dubuque & Sioux City Railroad Company as part of the land grant made by Congress to aid in the construction of its railroad, but which was finally adjudged by the courts to be no part of said grant.

16 In consideration whereof the said E. K. Goodnow hereby agrees to exercise reasonable care and diligence to enforce said claims, demands, or rights of action, and, after deducting all costs and expenses incurred in so doing, to hold the proceeds or amount collected in trust for the use and benefit of the parties owning the same.

Signed by the respective parties hereto.

In witness whereof the Iowa Homestead Company hereunto affixes its seal and causes these presents to be signed by its president and attested by its secretary this 14th day of June, 1876.

MASON THOMPSON,
President pro tem.

J. B. DUMONT, *Secretary.*"

17 EXHIBIT C, referred to in said agreed statement of facts.

Supreme Court of the United States.

THE IOWA HOMESTEAD COMPANY

vs.

THE DES MOINES NAVIGATION AND RAILROAD COMPANY *et al.*

This cause came on to be heard on the transcript of the record from the circuit court of the United States for the district of Iowa, and was argued by counsel.

On consideration whereof it is now here ordered, adjudged, and decreed by this court that the decree of the said circuit court in this cause be, and the same is hereby, affirmed with costs.

April 28th, 1873.

The plaintiff then read in evidence from the printed transcripts of the record in the Supreme Court of the United States, in the case of The Iowa Homestead Company against The Des Moines Valley Railroad Company, referred to in said agreed statement of facts, the following portions thereof:

In the District Court of Webster County, Iowa.

THE IOWA HOMESTEAD COMPANY

vs.

THE DES MOINES NAVIGATION AND RAILROAD COMPANY, EDWIN C. Litchfield, Electus B. Litchfield, Samuel G. Wolcott, *et al.*, and Roswell S. Burrows.

To said defendants above named:

You are hereby notified that there is now on file in the office
18 of the clerk of the district court of Webster county, Iowa, the petition of plaintiff aforesaid, claiming of you that the said Iowa Homestead Company is in possession and has the legal title to certain lands in the alternate sections within five miles of the Des Moines river, above the Raccoon Forks; that you claim in some way an adverse title thereto; that you be enjoined from prosecuting actions at law or pre-emptions to said lands to quiet the plaintiff's title, and for other relief. You are also notified that unless you appear thereto and defend before noon of the 2d day of the term of the said district court of Webster county, to be held on the 12th day of October, 1868, a default will be entered against you and judgment rendered thereon.

IOWA HOMESTEAD COMPANY,
GRANT & SMITH, *Attorneys.*

DES MOINES, IOWA, 10*th October*, 1868.

Accepted service for the defendants, The Des Moines Navigation and Railroad Company and Edwin C. Litchfield and Electus B. Litchfield.

JOHN BROWN,
Agent for Defendants.

At chambers, city of Davenport, Scott county, Iowa.

Ordered, That a temporary writ of injunction do issue, as prayed, on plaintiff's filing bond in penal sum of $500, conditioned as required by law, and the sureties to be approved by the clerk of Webster county, Iowa, district court.

Dated 1st day of October term, A. D. 1868.

JOHN F. DILLON,
Chief Justice Supreme Court Iowa.

THE STATE OF IOWA

vs.

THE DES MOINES NAVIGATION AND RAILROAD COMPANY, SAMUEL G. Wolcott, Wm. B. Wells, Roswell S. Burrows, Edwin C. Litchfield, Electus B. Litchfield, The Des — Valley Railroad Company, *et al.*

19 Whereas the Iowa Homestead Company has filed in our district court for the county of Webster a petition claiming that the said homestead company, a corporation created by the laws of Iowa, has the legal title to the lands (which are mentioned and described in plaintiff's petition), and that you or some of you have

brought and intend to bring certain actions at law against persons in possession of said lands to divert the title of said Iowa Homestead Company, and that you or some of you are about to prove up and claim pre-emptions on some of the lands which are named (in said petition), and has prayed in said bill to grant them title to said lands:

Now, these are to command you and each of you, your agents, attorneys, servants, that you do wholly refrain from prosecuting said actions at law or either of them, and that you wholly refrain from further applying for or proving up pre-emptions on any of said lands until the further order of our said district court for the county of Webster; and you will disobey this writ at your peril.

Witness, and in testimony, I, W. Lumpkin, clerk of the district court, have hereunto subscribed my name and affixed the seal of said court, at office, in Fort Dodge, this sixth day of October, A. D. 1868.

W. LUMPKIN,
Clerk District Court.

Accepted service of the within writ for the defendants, The Des Moines Navigation and Railroad Company, Edwin C. Litchfield, and Electus B. Litchfield.

J. BROWN,
Agent of said Defendants.

20 THE IOWA HOMESTEAD COMPANY

vs.

THE DES MOINES RIVER NAVIGATION AND RAILROAD COMPANY.

In this cause come the defendants, Litchfields and John Stryker, and file their affidavit, bond, and petition for the transfer of this cause to the circuit court of the United States for the district of Iowa, under certain acts of Congress of the United States, and the court being satisfied that the said affidavit and petition are sufficient under the law, and said bond being approved by the court, it is ordered that this cause be transferred to said circuit court of the United States for the district of Iowa, as to said defendants *in re*, and the clerk of this court is ordered to make the proper papers for the said transfer.

STATE OF IOWA, }
Webster County, } *ss:*

THE IOWA HOMESTEAD COMPANY

vs.

EDWIN C. LITCHFIELD, ELECTUS B. LITCHFIELD, and JOHN STRYKER, Impleaded with Rosswell S. Burrows, The Des Moines Navigation and R. R. Co., and Others.

I, John Brown, of Des Moines, in the county of Polk, in said State, being duly sworn, do depose and say that I am the agent of the defendants, Litchfield and Stryker, in the above-entitled action; that the same is now pending in the district court of Webster county,

Iowa; that the said defendants, for whom I am agent as aforesaid, are citizens of the State of New York, and that the plaintiff is a citizen of the State of Iowa; that the matter in controversy and dispute between this plaintiff and each and every of the defendants exceeds the sum of five hundred dollars, exclusive of costs;
21 that I have reason to believe and do believe that, from prejudice and local influence, said defendants will not be able to obtain justice in the State courts of Iowa, in which this action is pending and untried.

JOHN BROWN.

Subscribed and sworn to by John Brown before me this 15th day of May, A. D. 1869.

GEORGE B. CORKHILL, *Clerk.*

Know all men by these presents that we, Edwin C. Litchfield and Electus B. Litchfield and John Stryker, as principals, and John Brown, as surety, are hereby held and firmly bound unto the Iowa Homestead Company in the penal sum of one hundred dollars, lawful money of the United States; to the payment of which, well and truly to be made, we bind ourselves, jointly and severally, firmly by these presents.

The condition of this is such that if the said Edwin C. Litchfield, Electus B. Litchfield, and John Stryker shall enter or cause to be entered in the circuit court of the United States, to be held in and for the district of Iowa, copies of all process pleadings, depositions, testimony, and other proceedings in a certain suit or action now pending in the district court of the county of Webster and State of Iowa, in which The Iowa Homestead Company is plaintiff and said Edwin C. Litchfield, Electus B. Litchfield, and John Stryker, impleaded, etc., are defendants, and shall do such other appropriate acts as by the act of Congress approved July 27, 1866, entitled An act for the removal of causes in certain cases from State courts, are required to be done upon the removal of a suit into the United States courts, then this obligation to be void; otherwise, of force.

EDWIN C. LITCHFIELD.
ELECTUS B. LITCHFIELD.
JOHN STRYKER.
JOHN BROWN.

22 *Petition for Removal.*

To the district court of Webster county, Iowa:

The petition of Edwin C. Litchfield, Electus B. Litchfield, and John Stryker, defendants in the above-entitled action, respectfully shows that they are citizens of the State of New York; that this action is now pending in the district court of Webster county, Iowa; that the matter in dispute herein exceeds the sum of five hundred dollars, exclusive of costs.

And your petitioners further show that they have in this court their affidavit as required by the act of Congress approved March

2d, 1867, entitled "An act to amend an act entitled An act for the removal of causes in certain cases from the State court, approved July 27, 1866."

And your petitioners file this petition praying for the removal of this suit into the next circuit court of the United States to be held in and for the district of Iowa, and they herewith offer the surety required by the said above-entitled act.

D. O. FINCH AND J. M. ELLWOOD,
Attorneys for Defendants Litchfield and Stryker.

This affidavit, bond, and petition are filed in place of the original filed in district court of Webster county 13th October, 1868, the same appearing to be lost and not returned.

GRANT,
For Plaintiff.
J. M. ELLWOOD,
For Litchfield and Stryker.

THE IOWA HOMESTEAD COMPANY

vs.

THE DES MOINES NAVIGATION AND RAILROAD CO. *et al.*

OCT. 16, 1868.

And now, on this day, come the defendants, Crouse, McDer-
23 mott, and Cotter, by their attorney, G. Parsons, and file a motion to dissolve the injunction, which, coming on to be heard, and the court being fully advised in the premises, said motion is sustained as to them. Whereupon this cause is ordered transferred to the circuit court of the United States as to other defendants.

Webster District Court.

OCT. 13, 1868.

In this cause the defendants Litchfield and Stryker come and file their affidavits, bond, and petition for the transfer of this cause to the circuit court of the United States for the district of Iowa under certain acts of Congress of the United States, and, the court being satisfied that said affidavits and petition are sufficient under said law, and said bond being approved by the court, it is ordered that this cause, as to the said defendants, be transferred to said circuit court of the United States for the district of Iowa, and the clerk is ordered to make the proper papers for said transfer.

Mr. Clerk, please make the above entry in this cause, and the further entry that as to other defendants the cause is continued by agreement.

GRANT,
For Plaintiff.

The foregoing original notice, acceptance of service, order of Dillon, justice, writ of injunction, and acceptance of service thereof were

read in evidence by plaintiff; also the affidavit of James Grant as to the truth of the matters contained in the petition or bill of complaint in said homestead suit, which was in the words following:

STATE OF IOWA, *Scott County:*

I, James Grant, being duly sworn, depose on oath that I am one of the attorneys for the plaintiff; that the facts stated in the
24 foregoing petition are all of them of record, except the allegations of the interest and intent of the parties in the suit of Wolcott *vs.* The Des Moines Navigation Company. I have examined the records referred to in the bill, and have been informed as to the facts about the Wolcott suit by parties who appeared to know them, and I believe the allegation of the bill to be true.

JAMES GRANT.

Sworn to and subscribed before me this 1st day of October, 1868.

JOHN F. DILLON,
Judge Supreme Court Iowa.

STATE OF IOWA, *Webster Co.:*

District Court.

THE IOWA HOMESTEAD COMPANY
vs.
THE DES MOINES NAVIGATION & R. R. Co. *et al.*

"The petition of the Iowa Homestead Company shows—

"That said company is a corporation duly created by the laws and a citizen of the State of Iowa for the purpose of buying and selling lands in said State; that said plaintiff, by deed of purchase bearing date the 12th of November, 1863, acquired by and through the Dubuque & Sioux City Railroad Company all the right of said company, the Dubuque & Pacific Railroad Company, and the State of Iowa to about fifty thousand acres of land lying on the east side of the Des Moines river in Webster and Humboldt counties, Iowa, being the odd sections of land within the limits of the Dubuque & Pacific railroad grant of 1856 and the Des Moines river grant of 1846."

It is admitted that the above-described fifty thousand acres of land include and embrace all the lands mentioned and described in the petition of the said E. K. Goodnow in the suit now before this court.

25 "And by said deeds and certificates the plaintiff acquired a title to almost twenty thousand acres of land, in odd sections, within said grants in Webster and Hamilton counties, west of said Des Moines river, a list of which is hereto annexed and made part of this bill. Of these lands the fifty thousand acres lying east of the Des Moines river and claimed by the Des Moines Navigation & Railroad Company, a corporation created by the laws of Iowa, and its assigns, and some title or claim to twenty thousand acres of land on the west side of the river is, or has been, made by the Des Moines Valley Railroad Company, a corporation created by and a citizen of the State of Iowa. * * *

"On the 9th of June, 1854, the State made a contract with the Des Moines Navigation & Railroad Company, a corporation created by the laws of Iowa, to improve the navigation of the river, and to convey to said corporation all the remaining lands belonging to the State under the act of 1846. * * *

"After the settlement of the State with the Des Moines Navigation Company in 1858 the said navigation company conveyed certain parcels of the lands now claimed by the plaintiff to the following persons, among others: Samuel G. Wolcott, Wm. B. Wells, Roswell S. Burrows, Edwin C. Litchfield, W. J. McAlpine, Richard B. Chapman, Albert Tracy, Francis A. Tracy, Harriet Tracy, Electus B. Litchfield, Edward Wade, and John Stryker. * * *

"The said plaintiffs have been in possession of the lands claimed by them, themselves or their vendees, in contract since 1861. They have paid the taxes thereon to the State of Iowa since, in all amounting to eighty thousand dollars, and if their title has failed they are entitled to have their taxes refunded since 1861 by the holder of the legal title, who has not paid them. * * *

"The plaintiff says he has no adequate remedy for the grievances complained of except in a court of equity. He makes The Des Moines Navigation & Railroad Company, Samuel G. Wolcott, Wm. B. Wells, Roswell S. Burrows, Edwin C. Litchfield, Wm. J. McAlpine, Richard B. Chapman, Albert H. Tracy, Francis W. Tracy, Harriet Tracy, Electus B. Litchfield, Edward Wade, John Stryker, The Des Moines Valley Railroad Company, Thomas Cotter, Jacob Crouse, John B. McDermott parties defendant to this suit, and prays for a writ of subpœna against them.

"The plaintiff prays that said parties may be enjoined from prosecuting said actions or any other actions at law in relation to the title or possession of any of said lands until the final hearing of the bill; that the injunction be made perpetual; that said defendants Cotter, Crouse, and McDermott be enjoined perpetually from prosecuting any pre-emption to any of said lands; that the conflicting acts of the Secretary of the Interior and judicial decisions may be finally interpreted; that the plaintiff may be quieted in their title and possession to said lands on both sides of the river, or if the plaintiff's title to said lands is not the better title, and his title to the said lands is the title conveyed by the State, and failed under the right interpretation of the acts of 1846, 1856, and 1862, that his title to an equal number of acres in lieu thereof be decreed and established; that an account be taken of said indemnity lands, and the Des Moines Valley Railroad Company be decreed to make partition thereof and set apart and convey or relinquish to the plaintiff such lands as the plaintiff may be entitled to under said act of July 12th, 1862."

The State of Iowa, being acting trustee, to do justice in the premises and to convey to such party as may be established the true beneficiaries under said act, that in the event of a decree that the plaintiff's present title or any part of it has failed, that the said Des Moines Navigation and Railroad Company and its assigns may be decreed to repay the plaintiff all the taxes which he has paid on said lands

and interest thereon; and that said Des Moines Valley Rail-
27 road Company be decreed to release to the plaintiff all claims to the indemnity lands set apart to the plaintiff, and for such other relief as the nature of the plaintiff's case may require.

GRANT & SMITH,
Attorneys for Plaintiff.

Comes the plaintiff, October 23, 1870, and, by leave of court and consent of counsel, files the following amendment to his bill, to wit:

Circuit Court of the United States, District of Iowa.

THE IOWA HOMESTEAD COMPANY
vs.
THE DES MOINES NAVIGATION & RAILROAD COMPANY *et al.*

The plaintiff, by leave of court and agreement of counsel, amends his description of the property in dispute by adding, after the first clause of the bill, the following words:

That said lands in dispute and claimed by the Des Moines Navigation & Railroad Company and its assignees are the odd sections in townships 86, 87, and 88, ranges 27, 28, 29, and 30 west, which lie south of the second correction line, within five miles of the Des Moines river, and townships 89, 90, 91, and 92, ranges 28 and 29, east of the Des Moines river, within five miles of the east branch thereof.

The lands to which the Des Moines Valley Railroad Company make some claim are the odd-numbered sections in townships 89 and 90, ranges 28 and 29, which lie west of the Des Moines river and within five miles thereof.

GRANT & SMITH.

The amendment, being made to correct and simplify a description of the lands in controversy, is conceded to be true without formal answer.

Part of the Answer of Wm. B. Wells, Defendant in said Suit.

28 United States Court, District of Iowa.

THE IOWA HOMESTEAD COMPANY, Complainant,
vs.
THE DES MOINES NAVIGATION AND RAILROAD COMPANY, SAMUEL G. Wolcott, Wm. B. Wells, Roswell S. Burrows, Edwin C. Litchfield, Wm. J. McAlpine, Richard B. Chapman, Albert H. Tracy, Harriet Tracy, Electus B. Litchfield, Edward Wade, John Stryker, and Others, Defendants.

The several answer of the defendant, Wm. B. Wells, to the bill of complaint of The Iowa Homestead Company, complainant.

* * * And this defendant, further answering, denies that the title of the complainant to the lands claimed by these defendants and by the Des Moines Navigation and Railroad Company and its

grantees is superior and paramount to that of the said company and its grantees, and he expressly denies that the plaintiff, by reason of the matters in said complainant's bill of complaint contained as against the said Des Moines Navigation and Railroad Company and its grantees, has any title whatever to the said lands claimed by said company and its several grantees, respectively.

And this defendant, further answering, says that, as to whether or not the said complainant and its vendees have been in possession of and paid said taxes on the lands claimed by them since 1861, to the amount of $80,000, this defendant is ignorant and uninformed save by the said complainant's bill of complaint, but he expressly avers that the possession of the said lands by the said complainant and its vendees since 1861 is and has been unauthorized and wrongful, and that the said complainant should be required to account for
29 the use and rents and profits thereof to the property owners, respectively, during the time they have been in such possession, and he also expressly alleges and avers that all taxes whatever paid by said complainant have been paid by complainant voluntarily, with a knowledge of all the facts, and that the complainant is not entitled to have the same or any part thereof refunded.

And on this day, to wit, the 2d day of August, 1869, come the defendants, The Des Moines Navigation and Railroad Company, Samuel G. Wolcott, E. C. Litchfield, Wm. J. McAlpine, Richard B. Chapman, Electus B. Litchfield, Edward Wade, and John Stryker, by Ellwood, solicitor, and file in said cause the following answer to complainant's bill of complaint, to wit:

United States Circuit Court, District of Iowa. In Equity.

THE IOWA HOMESTEAD COMPANY, Complainant,

vs.

THE DES MOINES NAVIGATION AND RAILROAD COMPANY, SAMUEL G. Wolcott, Edwin C. Litchfield, Electus B. Litchfield, William J. McAlpine, Richard B. Chapman, Edward Wade, and John Stryker, Defendants to the Bill of Complaint of the Iowa Homestead Company, Complainant.

These defendants, The Des Moines Navigation & Railroad Co., Samuel G. Wolcott, Edwin C. Litchfield, Electus B. Litchfield Wm. J. McAlpine, Richard B. Chapman, Edward Wade, and John Stryker, now and at all times hereafter, saving and reserving to themselves all manner of benefit and advantage of exception to the many errors and insufficiencies in the complainant's said bill of complaint contained, for answer thereunto, or to so much and such parts and portions thereof as these defend-
30 ants are advised is material for them to make answer unto, answer and say that the foregoing and annexed answer of Wm. B. Wells herein, save as herein otherwise stated and set forth, truly and correctly sets forth all the facts and contains all the averments and allegations relied upon by these defendants and each and every one of them as a defense to the said complainant's bill of complaint; that the said answer of said Wells and the admissions and denials

and affirmative allegations therein contained are true to the best knowledge and belief of these defendants, and that these defendants adopt the said answer of the said Wells as their answer to the complainant's said bill of complaint, save and except as herein otherwise stated and set forth.

And these defendants, further answering, allege and aver that all the lands in and by the complainant's bill claimed to be in dispute by and between the complainant and these defendants were, by the State of Iowa, duly granted and conveyed to the said Des Moines Navigation & Railroad Company *by the State of Iowa*, as in the said answer of the said Wm. B. Wells fully stated and set forth; and that subsequent to such conveyance by the State to said Des Moines Navigation & Railroad Company the said company bargained, sold, granted, and conveyed to these defendants, respectively, separate and distinct tracts and parcels of said lands claimed by complainant, as will more fully appear by reference to the deeds or conveyances executed by said company to these defendants, respectively, and to which several deeds, for greater certainty, these defendants pray leave to refer, and that each and every of these defendants is a *bona fide* purchaser under the State of Iowa of the tract or tracts, respectively, conveyed to him by said company, and that he has full, complete, and indefeasible title thereto.

And these defendants deny that the said complainant is entitled to the relief claimed in his bill of complaint or any part or portion thereof, and aver and insist that by reason of the matters
31 above and in the said answer of Wm. B. Wells, adopted and made a part thereof, contained the title of these defendants to the lands in dispute claimed by them, respectively, is perfect and absolute. All which matters and things these defendants are ready to aver, maintain, and prove as this honorable court shall direct, and they pray that their respective titles to the tracts claimed by them, respectively, may be confirmed and approved and declared valid, and that they be hence dismissed with their costs herein most wrongfully sustained.

FINCH & RIVERS AND
J. M. ELLWOOD,
Att'ys for Defendants Above Named.

And on the 13th day of May, A. D. 1870, there was filed in said cause the following stipulation of parties:

United States Circuit Court, District of Iowa.

THE IOWA HOMESTEAD COMPANY
vs.
THE DES MOINES NAVIGATION AND RAILROAD COMPANY, SAMUEL G. Wolcott, William B. Wells, Roswell S. Burrows, Edwin C. Litchfield, William J. McAlpine, Richard B. Chapman, Albert H. Tracy, Harriet Tracy, Electus B. Litchfield, Edward Wade, John Stryker, and Others.

It is stipulated and agreed that the joint and several answers of the defendants, Albert H. Tracy, Francis Tracy, and Harriet Tracy,

verified by Albert H. Tracy; the several answers of the defendant, Wm. B. Wells, sworn to by said Wells, and the joint and several answers of the defendants, Samuel G. Wolcott, Edwin C. Litchfield, Wm. J. McAlpine, Richard B. Chapman, Electus B. Litchfield, Edward Wade, John Stryker, and the Des Moines Navigation & Railroad Company, sworn to by Electus B. Litchfield and Nathan J. Higbee, be deemed and taken as the answer of the several defendants herein, and that all previous answers of the said defendants verified by their solicitors and filed herein be withdrawn from file.

32

To the several preceding answers the plaintiff filed a formal replication, putting in issue the several averments therein contained.

Stipulations Between the Parties.

In the Circuit Court of the United States.

THE IOWA HOMESTEAD COMPANY

vs.

THE DES MOINES NAVIGATION AND RAILROAD COMPANY.

It is agreed that the only questions submitted on this hearing are—

1. In which of the parties is the paramount title to the lands in controversy?

2. If the title shall be adjudged to be in the defendant, The Des Moines Navigation and Railroad Company, is the plaintiff entitled to be reimbursed the taxes which it has paid on the lands?

The amount of taxes paid is admitted to be $2,000. If the court shall find that the plaintiff is entitled to be so reimbursed, the question of amount to be reimbursed shall be referred to a master, and the defendants shall have the right to show any counter-claims or matters which should be considered as reducing the amount to be reimbursed.

It is admitted that D. W. Kilbourne was a director in the Des Moines Valley Railroad Company from 1862 to 1867.

33

It is admitted that the Dubuque and Sioux City railroad was completed to Sioux City July 4th, 1870.

GRANT & SMITH,
Attorneys for Plaintiff.
WITHROW & WRIGHT,
For D. M. N. & R. R. Co.
S. L. STRONG AND
WITHROW & WRIGHT,
For D. M. V. R. R.
C. C. NOURSE,
For R. S. Burrows.

And afterwards, to wit, on the 31st day of May, 1871, the following decree was rendered in said cause by said circuit court:

THE IOWA HOMESTEAD COMPANY

vs.

THE DES MOINES NAVIGATION AND RAILROAD COMPANY *et al.*

The cause came on to be heard at the May term, 1871, of said court, Grant and Smith for the plaintiff, and Ellwood, Nourse & Withrow for the Des Moines Navigation and Railroad Company and purchasers, and Withrow & Strong for the Des Moines Valley Railroad Company; and the cause is heard upon the bill and amendments, answers, replications, agreements of counsel, exhibits, and depositions.

And thereupon it was ordered, adjudged, and decreed that the plaintiff's bill as to the lands in townships 86, 87, and 88, ranges 27, 28, 29, and 30, east and west of the Des Moines river and south of the second correction line, and townships 89, 90, 91, and 92, ranges 28 and 29, east of the Des Moines river, and the bill for the relief for indemnity lands in lieu thereof, be dismissed.

And the bill for relief as to the lands in townships 89 and 90 north, range 28 and 29 west, on the west side of Des Moines
34 river, be dismissed without prejudice, and that the plaintiffs pay the costs.

The following agreement was filed in said cause by the parties on the 20th day of October, A. D. 1871:

THE IOWA HOMESTEAD COMPANY

vs.

THE DES MOINES NAVIGATION AND RAILROAD COMPANY and Others.

It is agreed between the counsel for the complainants and defendants, who have appeared and answered, that the foregoing case was tried in the circuit court upon the bill, amendments, answers, replications, exhibits, and depositions offered by plaintiffs and defendants at and in the foregoing record, which the parties agree to examine and correct when printed.

It is further agreed that the plaintiffs have all the title to the property in dispute which lawfully belonged to the Dubuque & Pacific Railroad Company or Dubuque & Sioux City Railroad Company, its assignee.

It is also agreed that either party shall be authorized to read, either in the court below or in the supreme court, all acts, resolutions, and memorials, journals, or public documents of Congress or the State of Iowa which relate to the matter in controversy without offering them formally to the court, and use them in argument by proper reference.

It was also agreed that if either has omitted from their record any public record of the State or United States which relates to the matter in controversy the same may be read and considered in the

appeal court by furnishing the adverse party with notice thereof thirty days before the argument, the object of both parties being to obtain a final adjudication of the questions made in the issues between the parties, or all the facts which belong to the same. And it is further stipulated that the defendants, Samuel G. Wolcott,
35 Edwin C. Litchfield, Edward Wade, and John Stryker, each and every of whom are citizens of New York, and the Des Moines Navigation & Railroad Company, duly appeared in this court and filed their joint and several answers to complainant's bill, duly verified; that the said answers are not now found with the papers in this cause; that the said answers of said defendants were substantially in all respects like those of the defendants, Wm. B. Wells and Albert Tracy, on file herein and duly verified by them, respectively, except such changes, variations, and alterations as were necessary to present the interests held by said defendants, respectively, in the land in this action.

And it is further stipulated and agreed that the said answer of defendant, William. B. Wells, verified by him, with the necessary changes, alterations, and variations, to show and present the proper and respective interest of defendants, Samuel G. Wolcott, Edwin C. Litchfield, Edward Wade, and John Stryker and Des Moines Navigation & Railroad Company, shall be taken, treated, and deemed the answer of said last-named defendants herein.

J. M. ELLWOOD,
For all the Defendants Represented.
WITHROW & WRIGHT,
For all the Defendants they Represent, Except the Des Moines Valley Railroad Company.
GRANT & SMITH,
For Plaintiff.

In the Supreme Court of the United States.

THE IOWA HOMESTEAD COMPANY
vs.
THE DES MOINES NAVIGATION & RAILROAD CO. *et al.*

To prevent unnecessary incumbrance of the record in this cause it is stipulated that the evidence in the court below established the following facts:

36 That on the 27th day of April, 1863, there was certified to the State to aid in the construction of the Dubuque & Pacific railroad lands as follows:

	56,573.32 acres.	
	21,061.91 "	
	1,382.32 "	
		78,917.25
And the 13th December, 1864		159.60

That the land certified on the 27th day of December, 1858, embraced none of the lands in dispute in this controversy, and no lands lying in odd-numbered sections within five miles of the Des Moines river.

That the lists made on the 7th of April, 1863, and the 13th of December, 1864, embraced the lands in dispute, except indemnity lands, and all were in odd-numbered sections within five miles of the Des Moines river. * * *

(Signed) WITHROW & WRIGHT,
For the Des Moines Navigation & Railroad Company and the Des Moines Valley Railroad Company.
GRANT & SMITH,
For Plaintiff.

And on this day, to wit, the 13th day of May, in the May term, A. D. 1870, of said court, in the records of the proceedings thereof in said entitled cause there appears the following entry, to wit:

THE IOWA HOMESTEAD COMPANY, Complainant,
vs.
THE DES MOINES NAVIGATION & RAILROAD COMPANY, SAMUEL G. Wolcott, Wm. B. Wells, Roswell S. Burrows, Edwin C. Litchfield, Wm. J. McAlpine, Richard B. Chapman, Albert H. Tracy, Francis W. Tracy, Harriet Tracy, Electus B. Litchfield, Edward Wade, John Stryker, *et al.*, Defendants.

This action was commenced in the district court of Webster
37 county, Iowa, at the October term of said district court. The defendants, Edwin C. Litchfield, Electus B. Litchfield, and John Stryker, filed their affidavit, bond, and petition asking the removal of this action from said district court to this court under the provisions of the act of Congress, approved March 2nd, 1867, entitled An act to amend an act for the removal of causes in certain cases from the State courts, approved July 17, 1866.

And it appearing to said district court that said Edwin C. Litchfield, Electus B. Litchfield, and John Stryker were non-residents of the State of Iowa and residents of the State of New York, and that their application for the removal of this cause to this court is in all respects conformed to the requirements of said act of Congress, the said district court, at the October term thereof, in the year 1868, made the usual order transferring and removing this cause to this court as to the defendants, Edwin C. Litchfield, Electus B. Litchfield, and John Stryker, and this cause as to said defendants — removed to this court for trial.

And it appearing that the defendants, Samuel G. Wolcott, Roswell S. Burrows, Wm. J. McAlpine, Richard B. Chapman, Albert H. Tracy, Francis W. Tracy, Harriet Tracy, and Edward Wade, are each and every of them non-residents of the State of Iowa and district of Iowa, and under the statute above referred to are also entitled to a removal of this cause from the State court, and that said defendants, with the express consent and approval of the plaintiff, have appeared and answered the bill herein and asked to be made parties defendant, and that their rights may be heard and determined in this court and on the trial of this action;

And it further appearing to this court that the defendants so asking to be made parties claimant hold under the same title as the

defendants, Edwin C. Litchfield, Electus B. Litchfield, and John Stryker, their defence is in all respects identical, with the said plaintiff consenting, it is ordered that said Samuel G. Wolcott, Wm.
38 B. Wells, Roswell S. Burrows, Wm. J. McAlpine, Richard B. Chapman, Albert H. Tracy, Francis W. Tracy, Harriet Tracy, and Edward Wade, and each and every of them, be made parties defendant herein; that the answer filed by said persons be taken and deemed their answer to the complainant's bill, and that by their appearance and answer herein the said persons be deemed and treated as defendants herein and their rights in the premises adjudicated in and by this court in this action.

The following portions of the printed record in case of Edwin C. Litchfield *vs.* The County of Webster *et al.*, in the United States circuit court, district of Iowa, were put in evidence by the defendant Litchfield under stipulation therefor in the agreed statement of facts and stipulations filed herein, being parts of Exhibit D, thereto attached:

Evidence. Stipulation.

In the United States Circuit Court, District of Iowa.

EDWIN C. LITCHFIELD, Complainant,

vs.

THE COUNTY OF WEBSTER, in the State of Iowa, and JONATHAN HUTCHINSON, Treasurer.

It is hereby stipulated that the following shall be taken as a correct and true statement of facts in the above-entitled cause for the purposes of this suit, and as such accepted and treated as evidence, subject to the right of exception thereto by either party for incompetency, immateriality, or irrelevancy.

10th. From the time of the decision of the Supreme Court of the United States in the case of Litchfield *vs.* The Dubuque & Pacific Railroad Co., which decision is made part hereof, until the
39 9th day of May, 1868, the executive officers and agents of the United States asserted and held that all of said lands in question, under and by virtue of said act of Congress of May 15, 1856, passed to and became the property of the State of Iowa, or of said Dubuque & Pacific Railroad Co., and on the demand of the State, on or about April 7, 1863, the same were certified and approved to the State of Iowa under said railroad grant of May 15, 1856, as follows:

"GENERAL LAND OFFICE, *Feb.* 26, 1863.

"I, J. M. *Edwards*, Commissioner of the General Land Office, do hereby certify that the foregoing, on pages 1 to 4, inclusive, is a true and correct list of the tracts of land within the 6-mile limits, granted to the State of Iowa by the act of Congress approved the 15th of May, 1856, entitled 'An act making a grant of land to the State of Iowa, in alternate sections, to aid in the construction of certain railroads in said State, being the vacant and unappropriated lands in the alternate sections designated by odd numbers, for six

sections in width on each side of the railroad, 'from the city of Dubuque to a point on the Missouri river near Sioux city, with a branch from the mouth of the Tete Des Mortes, to the nearest point on said road,' known as the Dubuque and Sioux City (late Dubuque and Pacific) railroad, within the State of Iowa, and they are now submitted for the approval of the Secretary of the Interior, in accordance with the requirements of said act of the 15th of May, 1856, subject to all its conditions and to any valid interfering rights which may exist to any of the tracts embraced in the foregoing list.

"In testimony whereof I have hereunto subscribed my name and caused the seal of the General Land Office to be affixed, at the city of Washington, on the day and year first above written.

"[L. s.] (Signed) J. M. EDMUNDS,
"*Commissioner of the General Land Office.*"

40 "DEPARTMENT OF THE INTERIOR, *April* 7, 1873.

"Approved subject to the rights and conditions above mentioned.

"(Signed) J. P. USHER, *Secretary.*"

"GENERAL LAND OFFICE, *April* 11, 1863.

"I, J. M. Edmunds, Commissioner of the General Land Office, do hereby certify that the annexed pages, one to three, inclusive, *is* a true and literal exemplification of the original approved list on file in this office.

"In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

"[L. s.] (Signed) J. M. EDMUNDS,
"*Commissioner General Land Office.*"

A similar certificate of same date was given for the lands between the 6-mile and 15-mile limits of said railroad line; and said railroad company, by itself and its grantees, continued to claim the same continuously until the decision of the Supreme Court of the United States in the cases of Williams *vs.* Baker and The Iowa Homestead Co. *vs.* The D. N. & R. R. Co. in the year 1872, which decisions are part hereof.

11th. After the decision of the Supreme Court of the United States in the case of Wolcott *vs.* The D. N. & R. R. Co., reported in 5 Wallace, page 681, decided at the December term of said court, 1866, and made part of this statement, the executive officers of the United States having the charge and control of the public lands held and decided that all of said lands belonged to the United States and were part and parcel of the public domain and subject
41 to pre-emption and homestead entry under the laws of the United States, and for some time thereafter the register and receiver of the United States land office in the said county of Webster, at Fort Dodge, under the direction, instruction, and ruling and decision of the Commissioner of the General Land Office, and of the Secretary of the Interior, held that said lands were subject to pre-

emption and homestead entry, and allowed homestead and pre-emption entries to be made on some of said lands. Many of the most valuable tracts of said lands were, under such ruling and instruction by such register and receiver, allowed to be pre-empted and homesteaded some time after the said Wolcott decision, and complainant has been compelled to commence and prosecute suits in the courts of this State and of the United States to set aside and remove the cloud thereby created upon his title.

12th. After the decision of the supreme court in said case of Litchfield *vs.* The Dubuque & Pacific R. R. Co. the said railroad company claimed to be the owner of all of said lands within fifteen miles of the line of their road, and so claiming the ownership thereof sold and conveyed many tracts of the same to numerous parties, and said county of Webster collected taxes for county and State purposes from them thereon, and continued so to do until after said decisions of the Supreme Court of the United States in the year 1872, but said lands were at all times assessed as non-resident lands, so entered on the tax-book of said county, and the taxes received of any party who would pay the same, and receipts given to and in the name of the parties paying the same.

33d. Under the act of August 8th, 1846, lands above the Raccoon Forks were certified and approved to the State of Iowa as part of the so-called river grant, as follows:

October 30, 1851	81,707.93	acres
March 10, 1852	143,908.37	"
December 17, 1853	33,142.43	"
" 30, 1853	12,813.51	"

42 And all of the lands in controversy are embraced in the lands so certified and approved.

34th. That said certification and approval of said lands in April, 1863, as railroad lands, under the act of May 15, 1856, still remain in the possession of the State of Iowa, and have never been cancelled by the United States.

35th. All the lands claimed by complainant and other grantees of the D. N. & R. R. Co., under the so-called Des Moines river grant, are lands in place, and all of the indemnity lands provided by the act of Congress of July 12, 1862, have, with the consent of the United States, been conveyed by the State of Iowa to the Des Moines Valley R. R. Co.

WRIGHT, GATCH & WRIGHT,
Sol'rs for Complainant.
JOHN F. DUNCOMBE,
Attorney for Defendants.

Deposition of John Browne.

Question. State whether or not from the years 1859 to 1866, both inclusive, Webster county, its officers or agents charged with the collection of its revenues, claimed that the taxes were due and payable from complainant or other claimants of the lands in controversy under the so-called river grant for any of the years named, or

made any effort, by advertising the lands for sale or otherwise, to enforce payment; and, if not, state as fully as you can the reason why, and if the taxes were not paid by complainant or other claimants of said lands under said river grant for said years or any of them, state as fully as you know the reason why they were not.

Answer. From the year 1860, after the decision in the case of Litchfield *vs.* The Dubuque and Pacific R. R. Co., until the year 1867 the title to the lands in controversy was so unsettled and involved in so much uncertainty that the treasurer and other officers of Webster county deemed it inexpedient and unsafe to
43 offer the same for sale for delinquent taxes or otherwise seek to enforce payment. During all of the time named this was the settled policy and practice of said county in that respect. On the 21st day of September, 1860, E. G. Morgan, then treasurer, sent to the witness, as agent for Litchfield and other owners of said lands, a letter, a copy of which is hereto attached, marked Exhibit A, and made a part of this owner. On the 17th day of June, 1860, Jonathan Cattell, then auditor of the State of Iowa, as such auditor addressed a letter to the then treasurer of Hamilton county as to the proper course to be pursued in respect to the same description of lands in that county, a copy of which letter is hereto attached, marked Exhibit B, and made part of this answer, and said Cattell, as such auditor, addressed a circular letter in substance the same to the treasurers of other counties in which lands of the same description were located. The instructions therein contained continued to be acted upon after the decision in the case of Wolcott *vs.* The Des Moines Navigation and R. R. Co. in 1866 in all of the counties in which any of the so-called river lands were located, and none of those lands were sold for taxes during any of said years excepting through inadvertence, and when so sold in Webster county in some instances the sales were cancelled by the county on its own motion and the purchase-money refunded to the purchaser. During all of the time named the title to all the lands known as the river lands, and also embraced within the limits of the so-called railroad grant, *was* regarded by complainant, as well as persons generally conversant with the conflicting claims thereto as being so uncertain as to render it extremely hazardous and imprudent to pay the taxes thereon, and such uncertainty was the reason the taxes were not paid. The only reason why complainant discontinued payment of taxes thereon was the decision in the case of Litchfield *vs.* The Dubuque & Pacific R. R. Co., and he had commenced paying the taxes on said land for the year 1859 when first advised of such decision and discontinued payment solely
44 on account thereof immediately after the decision in the case of Wolcott *vs.* The D. N. & R. R. Co., reported in 5th Wallace, page 681, and regularly thereafter he paid the taxes for 1866 and subsequent years. After the decision in Litchfield *vs.* The Dubuque & Pacific R. R. Co. the lands in controversy within the limits of the railroad grant ceased to be regarded by the said county and its treasurer and other officers as claimed under the river grant, and from that time until the decision in the case of Wolcott *vs.* D. N. & R. R. Co. said county and its officers and the citizens of Webster county

generally acquiesced with the agents and officers of the United States and the State of Iowa in considering and treating the said lands as having passed to said State under the railroad grant of May 15, 1856, and the certificates issued to the State under that grant in April, 1863. Accordingly, the claimants under said last-named grant, after the issuance of such certificates in the year 1863, commenced to claim ownership to said lands and to pay the taxes on the lands in controversy, which the treasurer of said county received, knowing the same to have been paid under said railroad grant. From the time of the decision in the case of Litchfield *vs.* The Dubuque & Pacific R. R. Co. until the time of the decision in Wolcott *vs.* The D. N. & R. R. Co. the complainant and other claimants under the river grant did not understand that the county of Webster claimed that any of the lands in controversy were subject to taxation prior to their certification under the railroad grant in April, 1863, but, on the contrary, understood that the county did not so claim, and during all of the period aforesaid the United States, by its land officers, and the State of Iowa and the county of Webster and the claimants under the railroad grant of 1856 all claimed that the title passed to the State only by the certificate of April, 1863.

Q. State whether or not complainant, after said decision in the case of Wolcott *vs.* The D. N. & R. R. Co., made any effort to settle with Webster county for the taxes in controversy or any of the same; if so, state whether or not such effort was made at
45 different times, and all that was said and done at each time with respect thereto; what tenders or offers, if any, were made by or for complainant; what proposition or offers, if any, were made by the county, and with what result. State fully.

A. In 1867, after the Wolcott decision, in behalf of Litchfield and other owners, I offered to pay the county all the taxes claimed to be delinquent from the year 1859 to 1866, inclusive, without any interest or penalty thereon, such payment to be in full for the amount claimed by the county. We claimed the taxes to be illegal, and our offer was made by way of compromise and to remove the cloud by reason of the taxes being on the books of the county. This offer the county rejected. In the spring or summer of 1868 I offered to pay the taxes of 1862, 1863, 1864, 1865, and 1866, with interest at six per cent., which the county rejected, except on condition that the taxes of 1859, 1860, and 1861 should also be paid at the same time. At other times, in 1869 and subsequently, other offers were made to the county with a view of compromise, all of which were rejected. In October, 1870, the board of supervisors passed a resolution authorizing the treasurer to receive the taxes, except State taxes of 1859, 1860, and 1861, assessed and unpaid, with ten per cent. interest yearly, upon the terms stated in the resolution, a copy of which is marked No. 14 of documents in proof, but leaving the taxes of 1862, 1863, 1864, and 1865 to be paid with the penalty interest as claimed by the county. These were the only terms upon which the county at that time would receive payment. In April, 1872, an effort was again made toward a settlement or compromise, and at that time the board of supervisors passed a resolution authorizing the treas-

urer to receive the taxes of 1859, 1860, 1861, and 1862, with six per cent. interest, and the taxes of 1863, 1864, 1865, and 1866, with ten per cent. interest, upon the terms stated in the resolution, a copy of which is marked No. 15 of documents in proof, and expressly refused to accept payment on any other terms. Subsequently the time of payment named in that resolution was extended to
46 April 1, 1873. In March, 1873, I went to the office of the treasurer of Webster county to give him a list of all of the lands now in controversy, and offered to pay the amount due on them for the taxes of 1862, 1863, 1864, 1865, and 1866, and asked the treasurer to take the pay and make out the receipts for the same, and the treasurer said he would do so as soon as possible. The list was a long one and would require labor and time to make out the receipts, which he said would be ready in some two or three weeks, and requested me to come again for them. Within two or three weeks I went with the money to pay for the receipts of the taxes for the years named, and again offered to pay the same; but the treasurer then declined to accept the payment of the taxes of 1862, 1863, 1864, 1865, and 1866, except upon condition that I should also pay the taxes of 1859, 1860, and 1861. He also said he had commenced making out the receipts for 1862 to 1866, inclusive, and had them partly completed when the supervisors or the auditor had come to his office and told him not to accept the taxes of 1862 to 1866, except the taxes of 1859 to 1861, inclusive, were also paid at the same time. I had the money there ready to pay and offered to pay, and the treasurer made no objection to my offer or tender of the money, except that he refused to receive the taxes of 1862 to 1866, unless the taxes of 1859 to 1861, inclusive, were paid at the same time, such being the order of the board of supervisors.

Q. State what the fact is as to trespasses and waste having been committed on the lands in controversy during the pendency of the conflicting claims of title thereto. If trespasses and waste were committed during that time, state, as nearly as you can, the extent of the damage thus occasioned to the lands, and how you were prevented by the uncertain state of the title from protecting the lands against the same.

A. In consequence of the dispute of the title we were unable to protect timber lands from trespass and waste. Our title being
47 denied we were unable to maintain prosecution for trespass in the courts. I think the area covered by the trespass and waste committed on the lands in controversy would amount to 9,000 acres, and the damage at a low estimate, in my opinion, covered by such trespass and waste would amount to at least $90,000. The railroad company sold large portions of the timber lands, and their grantees again sold large portions of them. During their assumed ownership large quantities of timber were removed from the lands for railroad construction purposes, such as ties and bridge material, and during such claim of ownership and until after the Wolcott decision we were unable to maintain any suit against them.

Q. Do you know or can you set forth any matter or thing which may be a benefit or advantage to the parties at issue in this cause,

or either of them, or that may be material to the subject of this your examination or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

A. Of the lands in controversy not less than twenty thousand (20,000) acres were entered as homestead and pre-emption claims by about two hundred different parties, as shown by list No. 29 of documents in proof. Under the rulings of the Secretary of the Interior and other executive officers and agents of the United States they were held by the land officers of the United States to be public lands, and as such subject to pre-emption and homestead entry. The parties so entering the same went into possession, and except in cases where they have been dispossessed by actions of right, prosecuted by the claimant at great expense, still hold and refuse to surrender possession thereof. Uniformly in such actions of right complainant has been found to be the rightful owner without any resistance on the trial on the part of the defendants, but in
48 every instance where the defendants have made any improvements they have claimed and been allowed compensation therefor, under the occupying claimant laws, upon the holding of the courts that their possession was under color of title and their improvements made in good faith.

Of the lands above Des Moines embraced in the river grant the title of the Des Moines N. & R. R. Co. and its grantees to over 200,000 acres was denied by the decision of the Secretary of the Interior and the orders of the Land Department of May, 1868. After said decision and rulings nearly all of these lands were allowed to be pre-empted as public lands by the local land officers at Des Moines and Fort Dodge. Squatters were permitted to go on them, file declaratory statements, and paid the registers and receivers of the local land offices the regular fees for such filings. At least one hundred thousand (100,000) acres were so pre-empted in the land district of Fort Dodge and a like amount at the Des Moines land offices. In some instances patents were issued as late as the summer or fall of 1868. After the issuance of Wilson's order in May, 1868, declaring these river lands to be public lands and subject to entry, for the purpose of stopping the allowances of such entries and giving these squatters color of title, I obtained from Judges Miller and Love temporary injunctions staying such entries, but at the October term of 1868 said temporary injunctions were dissolved by Mr. Justice Miller on the ground that these local land officers, in allowing such homestead and pre-emption entries, were acting within the discretion conferred upon them by law, and that the courts would not interfere with the executive officers of the United States while exercising such discretion, and upon appeal to the Supreme Court of the United States from such decision the decision was affirmed, and is reported in 9 Wall., 575.

Cross-examination:

Q. Is it not true that the lands in controversy in this case were advertised for 1860, 1863, 1864, 1865, and 1866, and a part of the

lands for 1862 by the treasurer of Webster county for sale for
49 taxes, and that the only years in which they were not advertised were the years of 1859 and 1861?

A. On examination it appears that the lands were not advertised for the years 1859 and 1861, and only a few tracts were advertised for 1862. They were advertised for the year 1860, and part of them in 1862, 1863, 1864, 1865, and 1866, the advertisement being made in the years succeeding each of the years mentioned. Although advertised for these years, very few tracts were sold.

Q. In your direct examination you state that in some instances the sales were cancelled by the county on its own motion, and the purchase-money refunded to the purchasers. Can you name any of the particular cases in which this was done?

A. Yes, sir; George W. Bassett, Elias A. Scott, Michael McNamara, and —— Maney, who lived on section 7, 89, 28. There were others, but I cannot name them at this moment.

Q. Was the money refunded in any case, to your knowledge, except where a patent had been issued by the Government of the United States to the settler on the land?

A. I only recollect one instance where the patent had been issued, and that was the case of Elias A. Scott.

Q. Explain all the reasons why you state that the treasurer of that county knew that all the taxes paid were paid under the title claimed by the railroad grant.

A. Because the taxes on the great body of the lands were paid by the railroad company, as shown by stubs, and the fact of the receipts having been taken by Mr. Sargent, who was the agent of the railroad company, and only a few were paid by settlers.

50 EXHIBIT A.

"Erastus G. Morgan, treasurer and recorder of Webster county.

"FORT DODGE, IOWA, *Sept.* 21, 1860.

"J. Browne, Esq.

"DEAR SIR: Yours of the 17th inst. was rec'd, and in reply would state that the lands *to* which the Des Moines Nav. & R. R. Co. claim to own are not advertised for sale, but remain on our tax-book. The clerk has been ordered to put them on the book for the present year. They will not be advertised until the title is adjusted.

"Respectfully yours, E. G. MORGAN,
"Per E."

EXHIBIT B.

"AUDITOR'S OFFICE, IOWA,
"DES MOINES, *June* 14, 1860.

"Geo. Shepp, Esq., treas. Hamilton Co.

"DEAR SIR: Yours of the 9th inst. is received. After looking over the law and the questions propounded, and consulting Attorney General Rice, we conclude that it would be setting a bad precedent not to offer the town property at the tax sales, and that, being

assessed as town lots, it would not be proper or safe to sell as land by subdivision. This could not be done, at any rate, when the tax had been paid on any lots in a parcel or description. Hence it is better to sell as town property, but they should be described in as short a manner as possible to be explicit. It would be entirely right to include all unpaid lots in any one block in one description belonging to one person, or if owner be unknown.

"We conclude, in view of the questions as to the so-called river lands, and the further question as to their being liable to tax, that it would be best not to offer them for sale for taxes until these matters are determined or adjusted in some manner. There are
51 two questions in regard to them: Firstly. Has the State any title to them under the river grant, which it is reported has been decided in the negative, but of which we have no official information? 2d. Whether they are taxable prior to 1859 as the property of the river company or their grantees.

"This last question I thought had been decided by our courts, but learn from Attorney General Rice that there is some doubt about it. Upon the whole, it is thought best not to sell them at present, lest it may lead to unnecessary trouble and expense.

"Yours truly,

"(Signed) J. W. CATTELL,
"*Auditor of State.*"

Documentary Evidence.

1] "DEPARTMENT OF THE INTERIOR,
"WASHINGTON, *April* 10, 1862.

"SIR: In answer to your communication of the 18th March last, making certain inquiries respecting the proper disposition of lands in Iowa, granted to the State by act of Congress of 15th May, 1856, and by joint resolution approved March 2, 1861, I am of the opinion that they are to be disposed of as said act and resolution directs without any regard to act of August 8, 1846, referred to in your letter.

"It appears that the action of this Department in construing the last-named act has been in no respect uniform, not sufficiently so to form a precedent for its present direction; and if it had there are now other considerations which will control its action. The Supreme Court has decided, in the case of the Dubuque & Pacific Railroad Company *vs.* Litchfield (23 Howard, page 66) that the act of 8th of August, 1846, did not cede any lands to the State above the Raccoon Forks, and the before-mentioned joint resolution declares that the lands above the Raccoon Forks were improperly certified as a portion of the grant of 8th August, 1846.

52 "It follows, then, that such of those lands as are embraced in the act making the railroad grant, approved May 15, 1856, are to be disposed of according to the terms of that act, and that without any regard to the fact of their having been certified under the act of August 8, 1846.

"After completely satisfying the demands of the State embraced by that act, so much of the residue of the lands north of the mouth

of Raccoon river as were certified under the supposed grant of August 8, 1846, and which the State of Iowa had sold to *bona fide* purchasers prior to the 2d March, 1861, will be also certified to the State of Iowa.

"The act of 15th May, 1862, granting to the State for railroad purposes except such lands as the rights of pre-emption have attached thereto. This last remark is made because it affects the case of Crilly and may be others claiming pre-emption on said lands.

"Very respectfully, your obedient servant,

"CALEB B. SMITH, *Secretary.*

"To the Commissioner of the General Land Office."

2] "GENERAL LAND OFFICE, *April* 15, 1862.

"SIR: I have the honor to enclose a copy of the decision of the Secretary of the Interior, of the 10th inst., in the case submitted to the Department in our letter of the 18th ult., a copy of which was furnished you in a letter of the same date.

"Pursuant to said decision it is proposed to make out the list of lands coming to the State for railroad purposes under act of 15th of May, 1856, in so far as the six and fifteen mile limits of certain routes under that grant traverse the region which had been claimed by the State of Iowa under the act of 3th August, 1846, for the Des Moines river improvement above the Raccoon Forks, irre-
53 spective of the certified lists to the latter, which are held to be invalid under the decision of the Supreme Court of the United States at its December term, 1859.

"With great respect, your obedient servant,

"J. M. EDMUNDS,

"*Commissioner.*

"Hon. J. W. Grimes, U. S. Senate."

3] "EXECUTIVE OFFICE, IOWA, *May* 6, 1862.

"J. M. Edmunds, Commissioner General Land Office, Washington, D. C.

"SIR: Yours of the 15th April last covering copy of decision of Secretary Smith in regard to the effects of the grants of land made to this State by the acts of August 8, 1846, and May 15, 1856, is at hand.

"A portion of these lands was once certified to this State as school lands, and the certificate subsequently set aside because the Department decided them to be covered by the act of August 8, 1846.

"They were then certified to the State under the last-named act, and now that certificate is set aside because the lands were not covered by that act. They are now decided to be covered by the act of 1856. This State has sold portions of these lands as school lands and as lands coming to the State under the act of 1846, and the title of many grantees of the State are involved in the present decision. I understand the question will again be brought before the Supreme Court of the United States, and my principal object in writing you is that this State may not lose her equitable claim for reclamation

on the United States in case the State suffers loss by reason of the failure of the title conveyed by this State under certificate of the United States.

"Very respectfully, your obedient servant,

"SAMUEL J. KIRKWOOD."

54 4] "GENERAL LAND OFFICE, *June* 26, 1862.

"SIR: The attention of this office has been called to the condition of the lands in the region of the Des Moines river, above the mouth of the Raccoon Forks, which were claimed by the State of Iowa under the act of the 8th of August, 1846, for the improvement of said river.

"1st. The act of 1846, by the decision of the Supreme Court of the United States at its December term, 1859, is restricted to the lands lying below the mouth of the Raccoon Forks, and the claim of the State to all lands lying above that point as abnegated.

"2d. Under the decision of the Supreme Court the Secretary of the Interior has held that the alternate odd-numbered sections falling within the 6 and 15 mile limits of the railroads, where they traverse the region of the Des Moines river above the mouth of the Raccoon Forks thereof, would enure to the State under the act of 15th of May, 1856, to aid in the construction of said roads.

"3d. The joint resolution of Congress of the 2d March, 1861, declares 'that all the title which the United States still retain in the tracts of land along the Des Moines river, and above the mouth of the Raccoon Forks thereof, in the State of Iowa, which have been certified to said State improperly by the Department of the Interior as part of the grant by Congress, approved August 8, 1846, and which is now held by *bona fide* purchasers under the State of Iowa, be, and the same is hereby, relinquished to the State of Iowa.'

"To enable us to properly act in the matter, in view of the aforesaid decision and resolution, I have to request that you will furnish this office with the list of tracts of lands therein referred to 'held by *bona fide* purchasers of the State of Iowa' on the 2d March, 1861, certified under official seal, specifying in each case the date of
55 sale, name of purchaser, consideration, and date of patent or deed of conveyance by the State, with all the essential particulars connected with the transaction. This information is requested at your earliest convenience.

"Very respectfully, your obedient servant,

"J. M. EDMUNDS,

"*Commissioner.*

"To his Excellency Governor of Iowa, Des Moines, Iowa."

5] "GENERAL LAND OFFICE, *Jan'y* 27, 1862.

"GENTLEMEN: Mr. George Crilly claims pre-emption to the S. E. qr. 29, T. 89, R. 28 W., in virtue of settlement commenced in 1855. In 1852 a list was certified to the State of Iowa upon certain lands under the Des Moines grant of 1846. The ruling of the Supreme Court at December term, 1859, is against that grant above the Raccoon Forks, where the tract above mentioned is located.

"Irrespective of the claim the pre-emption claim falls to the ground by reason of the settlement having been made whilst there was an outstanding title from the United States under color of the act above mentioned.

"Respectfully, your ob'd't servant,

"J. M. EDMUNDS,
"*Commissioner.*

"Register and receiver, Fort Dodge, Iowa."

6] "GENERAL LAND OFFICE, *April* 22, 1862.

"GENTLEMEN: The case of George Crilly, in which he claimed the right to enter the S. E. qr. sec. 29, t'p 89, range 28 W., at Fort Dodge land office, was carried by appeal to the Secretary of the Interior from the adverse decision of this office, and on the 10th inst.
56 the Secretary reversed the decision of this office and decided that 'If the facts supporting a pre-emption claim are established to the satisfaction of the local officers, Mr. Crilly should be permitted to complete his entry,' there being no legal impediments to debar his right.

"You will, therefore, notify Mr. Crilly of the decision, and call upon him for the proof pursuant to the aforesaid decision.

"Respectfully, your obedient servant,

"J. M. EDMUNDS,
"*Commissioner.*

"Register and receiver, Fort Dodge, Iowa."

7] "GENERAL LAND OFFICE, *May* 9, 1862.

"GENTLEMEN: I transmit to you herewith three supplemental lists of lands, which appear to be vacant and unappropriated, in the odd-numbered sections within the six and fifteen mile limits of the Dubuque & Sioux City (late Dubuque & Pacific) railroad and the Cedar Rapids & Missouri River (late Iowa Central Air Line) railroad, and which enure to the State of Iowa under the act of May 15, 1856, for railroad purposes, to wit:

"For the Dubuque & Sioux City (late Dubuque & Pacific) road:

List No. 1, 6-mile limits, cont'g ..... 56,952.92 acres.
List No. 2, 15-mile limits, cont'g ..... 20,425.91 acres.

77,378.83 acres.

* * * * * * *

"These lands are within the aforesaid limits of said roads, where they traverse the Des Moines river improvement grant above the Raccoon Forks, as claimed by the State of Iowa under the act of 8th of August, 1846, which claim was abnegated by the decision of the Supreme Court of the United States at the December term, 1859, and will now enure to the State under the aforesaid act of 15th May, 1856, to aid in the construction of said road.

57 "You will carefully compare the lists with the plats and records of your office and report to this office as soon as practicable any interferences that may be found to exist therewith,

giving the name of the purchaser or locator and the number and date of the conflicting entry or location.

"As all the vacant lands within the six mile limits in the odd-numbered sections will fall to the State, you will report all such tracts as may have been omitted in the list of lands within said limits.

"In making your examination great care must be observed in order that your report may embrace all the interferences and omissions and serve as a correct basis for the final adjustment of the grant.

"You will return the lists with your report to this office.

"Very respectfully, your ob'd't serv't,

"J. M. EDMUNDS,
"*Commissioner.*

"Register and receiver, Fort Dodge, Iowa."

8] "GENERAL LAND OFFICE, *June* 12, 1862.

"SIR: In reply to your letter of the 2d inst., I have to inform you that the lands to which you refer as having been approved to the State of Iowa under the 8th section of the act of September 4, 1841, and which approval was rescinded for conflicting with the grant of 1846, for the improvement of the Des Moines river were not included in the railroad lists which were transmitted, for the reason that the State still claims those lands under the act of 1841, the conflicting claim under the act of 1846 having been abnegated by the decision of the Supreme Court of the United States at its December term, 1859. Therefore the tracts in question will
58 remain in their present condition and be withheld from sale or other disposition until you are otherwise instructed by this office.

"Very respectfully, your obedient servant,

"J. M. EDMUNDS,
"*Commissioner.*

"Register of the land office, Fort Dodge, Iowa."

"GENERAL LAND OFFICE, *April* 18, 1863.

"Register and receiver, Fort Dodge, Iowa.

"GENT.: I transmit herewith three certified transcript lists of lands in your district inuring to the State of Iowa for railroad purposes under the act of the 15th May, 1856, and approved to said State by the Secretary of the Interior on the 7th inst., viz:

"List No. 33. 6-mile limits of the Dubuque & Sioux City railroad, containing	56,473.32
"List No. 34. 15-mile limits of same road	21,061.91
"List No. 38. 15-mile limits of the Iowa Central Air Line railroad	13,470.96
"Total acres	91,006.19

"You will please acknowledge the receipt of said lists.

"Very respectfully, your obedient servant,

J. M. EDMUNDS,
"*Commissioner.*"

10] "GENERAL LAND OFFICE, *Oct.* 6, 1863.

"GENTLEMEN: The location of the N. W. qr. sec. 33, T. 89, R. 28, on W. 99,769, by Hannah Riley, has been approved and will be carried into patent in the order of its filing. The land thus approved lies within the 6-mile limits of the Dubuque & Sioux City railroad, and the right thereto has been contested on the ground that the land was not liable to settlement, the same being within the limits of the grant for the improvement of the Des Moines river. This objection is not deemed valid, as the grant
59 for the river improvement did not extend to this land; consequently the refusal of the register to allow claimants to file declarations for lands thus situated was erroneous.

"Respectfully, your obedient servant,

"J. M. EDMUNDS,
"*Commissioner.*

"Register and receiver, Fort Dodge, Iowa."

11] "GENERAL LAND OFFICE, *Nov.* 6, 1863.

"Register land office, Fort Dodge, Iowa.

"SIR: Your letter of the 27th ult. is received, and we note your remarks in reference to the river list, and in reply respectfully state that said list was intended to include all of the odd-numbered sections and parts of sections in place within the limits of the grant, and which *has* not been sold or otherwise disposed of by the United States.

"The railroad-grant act of 1856, of course, covers the odd-numbered sections within the limits of the railroad grant and inside of the river grant.

"The lands in the odd river lists certified to the State under act of 1846, which are not interfered with by the railroad grant and by sales and grants of swamp and university lands, it was thought proper to embrace in the new list under act of 1862, notwithstanding the title to them was confirmed by the joint resolution of 1861.

"Of the last-mentioned lands our records show about 58,000 acres.

"Very respectfully, your obedient servant,

"J. M. EDMUNDS,
"*Commissioner.*"

60 12] "GENERAL LAND OFFICE, *March* 29, 1864.

"Register and receiver, Fort Dodge, Iowa.

"GENTLEMEN: Your letter of the 8th inst. has been received, with enclosed warrants No. 6530 and No. 101,456, 160 acres each, act of 1855, and additional proof in the case of Elias Mercer, Lucius W. Hart, and Jonas Peterson. Mr. Mercer's entry of the E. ½, N. E. ¼, sec. 9, T. 87 N., R. 27 W., and Mr. Peterson's location of Wt. No. 101,456 on the N. W. fr. ¼, sec. 7, t'p 88 N., R. 28 W., have been this day approved and filed for patenting.

"Mr. Hart's location of Wt. No. 6530 on the W. ½ of N. W. ¼ and W. ½, S. W. ¼, sec. 21, t'p 88 N., R. 28, has also been approved, but cannot be patented until the land, a part of which has heretofore

been approved to the State for railroad purposes, shall be released by the Governor. The Governor was notified of the decision of this office in Hart's case by letter of the 3d ult. In reply the register of the State land office says the Governor is not now authorized to execute such a release, but undoubtedly will be by the action of the Legislature now in session, and adds that all lands which have been improperly approved to the State will thereupon be relinquished. Whenever this is done the patents will immediately issue to the rightful claimants.

"Respectfully, JOS. S. WILSON,
"*Acting Commissioner.*"

Copies from Journal of Board of Supervisors of Webster County.

13] "NOVEMBER 11, 1863.

"In the matter of remitting the taxes heretofore assessed on the river and railroad lands in this county, the committee appointed to investigate the subject made a verbal report in detail, which report was accepted and the committee discharged, when the following resolution was passed:

61 "Resolved, That, in the opinion of this board, it is deemed inexpedient to remit any taxes heretofore assessed or collected upon any of the river, company, or railroad land grants situated in this county, the title to all or at least a part of said lands being unsettled, in our opinion."

14] "OCTOBER 19, 1870.

"On motion, the original resolution was amended and adopted as follows:

"The treasurer of Webster county is hereby authorized to receive the principal, with ten per cent. interest per annum, of the delinquent tax for the years 1859, 1860, and 1861 now charged on the tax-books on the odd sections along the Des Moines river known as river lands, provided said taxes shall be discharged within a reasonable length of time from the passage of this resolution, except as to State taxes of all kinds; and the parties paying the same waive all claims for redress or action against the county at any time and all informalities of the levy of any of said tax."

15] "APRIL 6, 1872.

"Mr. Beecher then moved the following resolution, to wit:

"Resolved, That the treasurer of Webster county, Iowa, be, and he is hereby, authorized to receive the taxes and to cancel all delinquent taxes standing upon the tax-book of Webster county, Iowa, against the real estate and personal property of said county for the years 1858, 1859, 1860, 1861, and 1862, and give receipts in full upon the receipt of such a sum as shall be equal to the original amount of tax due upon said lands for said years, together with interest thereon at the rate of six per cent. per annum from the date said tax first became due to the date of payment, and that the treasurer be, and he is hereby, authorized to receive the taxes and cancel all delinquent taxes standing upon the tax-books of Webster county,

Iowa, against the real and personal estate of said county for
62 the years 1863, 1864, 1865, 1866, 1867, 1868, 1869, and 1870, and give receipts in full therefor upon the receipt of such a sum as shall be equal to the original amount of tax due upon said land for said years, together with interest thereon at the rate of ten per cent. per annum from the date when said tax became due to the date of payment:

"Provided, however, That all persons accepting of the terms of the above resolution are understood to and do by the acceptance of the terms thereof agree to waive all objections to the manner and legality of the assessment and levy of said taxes and to the amount of the same: And provided further, That the terms of this resolution be complied with and taxes paid within one hundred days from the date of the passage of this resolution.

"It is also agreed that any person accepting this proposition shall pay and clear up all the delinquent tax against the said property.

"Mr. Crandall moved to amend by striking out the year 1870. The yeas and nays being called for resulted as follows, to wit: Yeas, Crandall; nays, Brown, Beecher, Pratt, and Landen.

"Mr. Pratt moved to amend by striking out one hundred and inserting ninety days. Adopted.

"The original motion as amended was then adopted."

16] "NOVEMBER SESSION, 1872.

"Mr. Beecher offered the following resolution, to wit:

"Resolved, That the resolution of instruction to the treasurer passed at the April session, 1872, relating to the payment of delinquent taxes be extended to April 1, 1873. Adopted.

"J. B. SCOTT,
"*County Auditor, Webster Co., Iowa.*"

17] "The following preamble and order in reference to the land of E. A. Scott was passed and adopted by the board, viz:

63 "Whereas the southwest quarter of the southwest quarter and lots five (5) and six (6) of section No. (17), in township No. eighty-seven (87) north, of range No. twenty-seven (27) west, of the 5th P. M., Iowa, was, on the first day of April, A. D. 1863, entered in the United States land office, and has been since patented to Elias A. Scott by patent dated May 5, 1863; and

"Whereas the said land has been assessed prior to that time, and certain taxes have been levied upon said land prior to the entry of the same: Therefore

"It is ordered that the treasurer of Webster county be hereby directed to mark upon the tax records of said county opposite said lands, in all cases prior to the tax of 1864, 'Lands released from this tax as per order of the board of supervisors, Sept. 6, 1864, and said lands are hereby released."

18] "The following order, book 1, page 180, was also passed in reference to the S. E. quarter of section 11, T. 88, R. 28, viz:

"Whereas the S. E. quarter of sec. 11, T. 88, R. 28 west, of the

5th P. M., Iowa, was, on or about the 10th day of April, 1863, entered in the United States land office, and has since been patented to Frederick Crouse by patent dated May 5, 1864; and

"Whereas the said land has been assessed prior to the date of said entry, and taxes levied thereon: Therefore

"It is ordered that the treasurer of Webster county be hereby directed to *make* upon the tax records of said county opposite said lands, in all cases prior to the tax of 1864, the following enty, to wit: 'Lands released from this tax as per order of the board of supervisors, Sept. 6, 1864,' and said lands are hereby released."

64 19] "WASHINGTON CITY, D. C., *May* 23, 1866.

"To the honorable census board of the State of Iowa, Des Moines:

"Pursuant to the requirements of chapter 79 of the acts of the eleventh General Assembly I have the honor to report—

"That I have consummated an adjustment with the United States of the excess of lands received by the State under the act of Congress of July 12, 1862, and transmit herewith for your approval a copy of the agreement containing the terms of said adjustment.

"It will be observed that the State in this settlement is credited with the whole amount of land in odd sections and lying within five miles of the Des Moines river, from the Raccoon Forks to the northern boundary of the State, determined (by the Department) to be 558,004.06 acres.

"The State is then charged with the several quantities of land following, to wit:

	Acres.
"1st. Indemnity lands selected under special certificate, dated April 25, 1863	297,603.74
"2d. Remaining lands in place yet to be certified	167,109.02
"3d. Lands in place confirmed by the joint resolution of March 2, 1861	44,838.46
"4th. Lands selected and heretofore certified on the east fork of the Des Moines river and more than five miles from the western or main branch	11,661.80
"5th. The excess selected and approved to the State as a part of the 500,000-acre grant, under the act of September 4, 1841	35,473.84
"Making in all	556,686.74
"And leaving due the State, to balance the whole account of the	1,317.32

65 "For this a special receipt will be issued.

"The 11,661.80 acres on the east branch of the Des Moines river heretofore approved to the State as a part of the Des Moines river grant and disposed of by the State as such are held by the Department, under the decision of the Attorney General, to be a proper and legitimate offset to so much of this grant. Hence they are charged to the State in this settlement.

"The 35,673.54 acres charged in excess under the 500,000-acre grant (act 1841) include the 25,660.03 acres over and above the 500,000 acres which are embraced in the book of diagrams approved and certified to the State on the 12th of September, 1854, and which have hitherto been considered the excess; and also the 12,813.51 acres which were once approved as a part of the 500,000-acre grant, and afterward rejected and approved and certified as a part of the Des Moines river grant. These lands have been known as the 'river school lands.'

"Notwithstanding that they have been disposed of by the State as a part of the Des Moines river lands, said chapter 79 requires that they shall be included and certified as a part of the grant of 1841.

"Deeming it my duty to carry out the provisions of the law, regardless of my personal opinion as to their correctness or propriety, I have thus included these lands, thereby increasing said excess to 35,475.54 acres, and allowed them to be deducted from the amount of the Des Moines river grant due the State, as the Department had determined.

"The proper and necessary lists, according to the terms of this adjustment, will be made and approved by the Secretary and delivered to me or sent to the State.

"In the preparation of these lists all lands which appear at the General Land Office as having been selected as swamp under act of September 28, 1850, and all tracts to which pre-emption rights had attached prior — July 12, 1862, will be excluded. 66 If, however, any of the tracts thus listed and certified shall be found to have been duly selected under said act of September 28, 1850, and shall be shown by legal investigation to be swamp or overflowed or to belong to the State by said act the Government will approve and certify other lands of like quantity in lieu thereof.

"This adjustment, which I think is fair and just and should be satisfactory to the State, will, when approved by you, be a final settlement between the State of Iowa and the United States of all claims under the Des Moines river grant, as well as of the act of 1841, except as far as valid and legal subsisting adverse rights may be found to exist to any of the tracts thus approved to the State.

"The excess of the 500,000-acre grant (35,475.54 acres) thus deducted is, by an agreement between the State and the Des Moines Valley Railroad Company (the beneficiary of the grant), to be credited to said company, at the rate of one dollar and twenty-five cents per acre, in the satisfaction of claims against the State on account of the improvement of the Des Moines river. Said company should, therefore, be credited on the claims they are under obligations to satisfy with the sum of $44,341.67.

"My authority extends only to settlement with the General Government. I have no power to carry out this agreement between the State and the company. It is but just, however, for me to say that this settlement has been made with the United States with the full understanding that this arrangement should be carried out.

"The company, through its agents, has for a long time been laboring to this end. The opinion and decision of the Secretary of the

Interior (a copy of which, accompanying Mr. Kilbourn's report made last winter, is herewith transmitted for your examination in connection with this adjustment) is the result of their efforts.

67 "The labor of these agents (Messrs. Kilbourn and Wason) heretofore in the premises has greatly relieved me and enabled me to close up the settlement thus early. It is due the company that this credit be given as soon as possible.

"I hope, therefore, that this entire agreement will meet with your approbation and that you will, as I think you have a right and may safely do, fully consummate and carry it out by giving said company the benefit of said credit against such claims without delay.

"Very respectfully submitted,

"J. A. HARVEY,
"*Commissioner.*"

"*Adjustment of Iowa Des Moines River Grant under the Act of July* 22, 1862, *and Joint Resolution of March* 2, 1861.

"DEBIT.

	Acres.
"The State of Iowa, with the quantity of indemnity lands selected under special certificate dated April 25, 1863	297,603.74
"The lands in place to be certified	167,109.02
"The lands in place confirmed by joint resolution of March 2, 1861	44,838.64
"The quantity selected on the east fork of the Des Moines river, and certified to the State under the original law of August 8, 1846	11,661.80
"The excess selected and approved to the State under the 500,000 grant, 1841	35,473.54
	"556,686.74
"Remaining indemnity due to the State	1,317.32
	"558,004.06
	"558,004.06

68 "CREDIT.

"The State of Iowa with the whole area of the grant above the Raccoon Forks	558,004.06
	558,004.06

"General Land Office, May 21, 1866.

"J. M. EDMUNDS,
"*Commissioner General Land Office.*"

"WASHINGTON CITY, *May* 21, 1866.

"Pursuant to the authority conferred by the act of the State of Iowa, approved March 30, 1866, 'for the adjustment of certain land claims with the General Government,' I, Josiah A. Harvey, register of the State land office and as commissioner on behalf of the State,

do hereby assent to the adjustment as herein stated, the said adjustment to be held as binding and conclusive on the said State as provided in said act.

"JOSHUA A. HARVEY,
"*Register of the State Land Office and Commissioner on Behalf of the State of Iowa.*"

"STATE OF IOWA, *ss:*

"The within adjustment as stated is hereby approved by us for the State of Iowa.

"June 20, 1866.

[SEAL.] "WM. M. STONE, *Governor,*
"JAMES WRIGHT, *Secretary of State,*
"JOHN A. ELLIOTT, *Auditor,*
"W. H. HOLMES, *Treasurer,*
"*Census Board.*"

"DEPARTMENT OF THE INTERIOR, *May* 22, 1866.

"The adjustment as herein stated is hereby approved.

"JAS. HARLAN, *Secretary.*"

69 "DEPARTMENT OF THE INTERIOR,
21] "GENERAL LAND OFFICE, *March* 7, 1867.

"Register and receiver, Fort Dodge, Iowa.

"GENTLEMEN: Cash pre-emption entry No. 5276, in the name of J. W. Payne, is suspended for the reason that it embraces lands certified to the State of Iowa, March 10, 1852, under act of August 8, 1846, and again certified June 14, 1866, under joint resolution of March 2, 1861. Said entry embraces the S. W. qr. sec. 9, t'p 86, rng. 27, and is claimed by the Des Moines Navigation Improvement Co., is above the Raccoon Forks, and if improperly certified to the State in 1852 may have been subject to settlement by a *bona fide* pre-emptor in 1854, date of Payne's settlement.

"Mr. Payne clearly proves settlement in May, 1854, the erection of a dwelling-house in the fall of 1855, and continued residence on said land ever since.

"For failure to prove up and pay therefor he alleges the refusal of your office on account of the adverse claim of said company.

"Said joint resolution of March, 1861, provides 'that all the title that the U. S. still retains to certain land above the mouth of the Raccoon Forks, and which have been improperly certified to said State, is hereby relinquished,' &c.

"Mr. Payne's pre-emption claim having attached prior to March, 1861, to lands improperly certified in 1852, and his proof being otherwise sufficient, he makes out a *prima facie* case, and you will notify said Des Moines Improvement Company, or other adverse claimant, to show cause upon a notice, of say thirty days, why the State of Iowa ought not to relinquish any right or color of right she may claim to have acquired to the tract in question by virtue of said improper certification, and the entry of said Payne be thereupon patented.

70 "Upon the expiration of the time specified report the action had, referring to this date.

"Very respectfully, y'r ob't ser't,

"JOS. S. WILSON,
"*Commissioner.*"

22] "DEPARTMENT OF THE INTERIOR,
"GENERAL LAND OFFICE.

"Register and receiver, Fort Dodge, Iowa.

"GENTLEMEN: J. Browne, Esq., of Des Moines, Iowa, has filed in this office two affidavits impeaching the pre-emption claim of John Page to W. h'f se. qr. and E. h'f S. W. qr. sec. 19, T. 89, R. 26 W., and asking for an investigation.

"The records of this office show that Page filed his D. S. No. 1872 for said tracts Aug. 30, 1866, alleging settlement upon the W. h'f S. E. sec. 19, October 17, 1852, and that he proved up and located warrant No. 88978, 160 acres, act 1855, upon the whole of his claim February 27, 1867.

"The proof shows a settlement by Page in October, 1851, and that he (Page) has claimed, cultivated, and occupied said tracts since that time and now resides thereon and has fifty acres under cultivation.

"On the contrary, the affidavits furnished by Mr. Browne assert that Page resides on the S. W. qr. S. W. qr. sec. 19, and not on the land pre-empted, and that Page removed from Illinois to Iowa and settled upon said section in 1864 and built a log-house on said S. W. of S. W. of 19 in the spring of 1863, where he now resides.

"This tract falls within the limits of the Des Moines river grant and was approved to the State December 30, 1853, but has never been confirmed under the joint resolution of March, 1861, or act of July, 1862.

71 "You will order an investigation in this case, notifying Page and the proper authorities of the State and 'Des Moines River Navigation Company' of a time and place when and where the same will be held.

"You will conduct the hearing in the usual manner, and allow each party to cross-examine the witnesses of the other, and in this way bring out all the facts.

"The affidavits filed by Mr. Browne and the proof in the case are herewith enclosed.

"At the conclusion of the hearing you will transmit the testimony elicited, with your joint opinion, and the inclosed papers to this office in a special letter, referring to this as "G" by its date.

"Very respectfully, "JOS. S. WILSON,
"*Commissioner.*"

Protest by the D. N. R. R. Co. against release by the State of Iowa of any lands under the river grant as contemplated by chapter X, act 12th General Assembly.

23] "To the Governor and register of the State land office of the State of Iowa:

Whereas the Government of the United States has heretofore, at different dates, certified to the State of Iowa a great portion of the lands known as Des Moines river lands, lying in the odd-numbered sections within five miles of the Des Moines river and above the Raccoon Forks, in said State; and

Whereas the State of Iowa, since the said lands have been so certified, under and by authority of the General Assembly of said State, duly given and conferred, has, by its proper executive officers, granted and conveyed to the Des Moines Navigation and
72 Railroad Company, a corporation duly organized under the laws of the State of Iowa, and to divers persons or individuals as grantees, all, or nearly all, of said lands; and

Whereas by the acts and resolutions of the Congress of the United States and the decision of the Supreme Court of the United States the title to said lands so conveyed by the State of Iowa to its grantees is vested and confirmed in the said grantees of the State absolutely and indefeasibly; and

Whereas, in defiance or disregard of the said acts and resolutions of Congress and the decision of the said Supreme Court, the Commissioner of the General Land Office has recognized and allowed the alleged claims of certain pretended pre-emptors on said lands, and announced and declared his purpose and intention of issuing to such pretended pre-emptors patents for said lands, upon the execution of a release by the Governor of the State of Iowa to the United States of all the interest which the State now has in said lands covered by such pretended pre-emptions; and

Whereas the General Assembly of the State of Iowa, on the 5th day of February, A. D. 1868, passed an act authorizing the Governor of the said State to execute releases of such lands to the United States, which said act is entitled 'An act to authorize the Governor to release lands which have been certified to the State by authority of the Secretary of the Interior under the land grants where settlers' rights have intervened prior to the time when the title vested in the State, and for the purpose of correcting errors in transfers to the State,' and which has been duly approved by the Governor of said State; and

Whereas it has been judicially settled that the State of Iowa now has no interest in or title to said lands, but that the same belong to and the title thereof is vested in the purchasers and grantees of the said land under and from the State of Iowa:

73 Now, therefore, the said Des Moines Navigation and Railroad Company, and the individuals now holding title to the said river lands, believing that the State has now no interest whatever in said lands, and that such releases, if executed by the Governor, will only tend to cast a cloud upon their title as owners of

the said lands and lead to confusion and prolonged litigation, resulting in injury ultimately both to the pretended pre-emptors and to us who hold the titles to said lands, do most earnestly, but respectfully, protest against any and all releases of said lands by the Governor to the United States under the said act of said General Assembly of the State of Iowa, above referred to.

"Des Moines, Iowa, Feb'y 7, 1868.

"Copies del'd to the Governor and register, and sent to the Com'r Gen. Land Office, Mar. 17, 1868."

24] "DEPARTMENT OF THE INTERIOR,
"GENERAL LAND OFFICE, *March 24th*, 1868.

"J. Browne, Esq., Des Moines, Iowa.

"SIR: Your letter of the 17th inst., enclosing your protest as agent of the 'Des Moines Navigation and Railroad Co.' against the relinquishment by the Governor of Iowa of certain lands within the five-mile limits of the Des Moines river, has been received and placed upon the file of this office.

"Very respectfully, JOS. S. WILSON,
"*Commissioner.*

25] "DEPARTMENT OF THE INTERIOR,
"WASHINGTON, D. C., *May* 9, 1868.

"SIR: I have received your report of the 9th October last, and the accompanying papers, in the case of Herbert Battin, from the Des Moines office, Iowa, claiming the right of pre-emption to the southwest quarter 3, township 83, range 27, by reason of a settlement made thereon October 2, 1857.

74 "It appears from your report that on the 6th of December, 1866, you awarded the land to Battin, but as it had been previously certified to the State of Iowa under the railroad grant of May 15, 1856, you required a relinquishment on the part of the State before issuing patent; that on the 23 ——, 1867, you re-examined the case and decided to cancel the entry of Battin, upon the ground that his settlement commenced after the rights of the railroad company had attached.

"From this decision Battin appeals. The required relinquishment under the railroad grant was received at your office after you had made the second decision.

"This tract of land is a part of an odd-numbered section situated above Raccoon Forks, within five miles of the Des Moines, and claimed as a part of the grant to Iowa to aid in the improvement of said river. It is also within the six-mile limit of the railroad grant, and was approved and certified to the State under both grants.

"In view of these grants, the general decisions of the Department and of the Supreme Court in reference to their extent and validity, it becomes necessary to review the whole matter in order to — a correct determination of the case under consideration.

"1st. The act of Congress, approved August 8, 1846 (9 Stat., 777), granted to the Territory of Iowa 'for the purpose of aiding said Territory to improve the navigation of the Des Moines river from its

mouth to the Raccoon Forks (so called), in said Territory, one equal moiety, in alternate sections, of the public lands remaining unsold and not otherwise disposed of, incumbered, or appropriated, in a strip five miles in width on each side of said river,' to be selected within said Territory by an agent or agents, &c.

"The proper State authorities, February 15, 1851, formally notified your office that they selected the odd sections above the Raccoon Forks to the source of the Des Moines river; and on
75 the 10th March, 1852, certain lands, among which was the tract in question, were approved to the State by Secretary Stuart, in view of the decision of Secretary Walker that the grant extended above said forks. Prior to this last date several conflicting decisions had been made as to the limits of this grant, some extending it only to the mouth of the Raccoon Forks, others to the northern boundary of the State.

"At the December term, 1859, the Supreme Court of the United States, in the case of the Dubuque & Pacific Railroad Company *vs.* Litchfield (23 Howard, 66), decided that this grant did not extend above the Raccoon Forks.

"The action of the executive departments awarding and transferring to the State under this grant, lands situated above the said fork was regarded by the Court as unauthorized and void.

"They were, therefore, approved to the State for railroads under said act of May 15, 1856, so far as such lands were situated within the prescribed limits of the line of the road.

"The attorney of the Des Moines Navigation and Railroad Company, in a very elaborate brief, contends that under the grant of 1846 this land was withdrawn, and that the original decision of the court could not operate to restore it. He refers to the instructions issued by the Commissioner of the General Land Office of June 1, 1849, to the register and receiver at Iowa City, Iowa, for evidence of withdrawal. Upon looking at these instructions it is found that the withdrawal only extended up to township 83 north, range 26 west, that being as far as the public surveys had progressed in that direction. This tract is, consequently, not within the limits of that withdrawal.

"Besides, the Court held that the act of Congress 'was a grant to Iowa of an *individual* moiety of the lands below the Raccoon Forks, and the officers of the executive department had no further authority than to make partition of these lands. Having ex-
76 tended their acts to lands lying outside of the boundaries, their attempts to make partition were merely nugatory.'

"The grant being thus restricted to lands below the Raccoon Forks, Congress, by resolution approved March 2, 1861, relinquished to the State of Iowa all the title the United States then held in the tracts of lands above the said forks, which had been improperly certified to said State under the grant of 1846, and which were then held by *bona fide* purchasers under the State.

"It is also claimed that the Des Moines Improvement Company was a *bona fide* purchaser from the State, and consequently that the defect of title was cured by said resolution. After it had been ap-

proved the State was called upon to furnish a list of the tracts improperly certified to her which she had sold.

"This tract is not found in the State's list, although it appears in a list of tracts said to have been sold by the company.

"Said resolution not covering all the lands claimed for the Des Moines river grant, Congress passed the act approved July 12, 1862.

"This act makes a new grant to the State of those lands above the Raccoon Forks, 'to be held and applied in accordance with the original grant,' except a portion thereof which are to be used to aid in constructing a railroad, and it is provided that 'if any of said lands shall have been sold or otherwise disposed of by the United States, excepting those released under the joint resolutions,' an equal amount of lands within the State are to be set apart and certified in lieu thereof.

"Referring to the original grant, it is found to include only public lands 'remaining unsold and not otherwise disposed of, incumbered, and appropriated.' The new grant gives indemnity for any of such lands above the said forks disposed of except those released
77 by the resolution. In view of this legislation it became necessary to ascertain what indemnity, if any, was due the State. The Commissioner of the General Land Office, therefore, stated an account between the United States and the State of Iowa, dated May 21, 1866. The State was credited with the amount of the odd-numbered sections within five miles of the Des Moines river above the Raccoon Forks, being a total of 558,004.06 acres, and debited as follows:

	Acres.
"1st. Land selected under special certificate	297,603.74
"2d. Land in place to be certified	167,109.02
"3d. Land confirmed by resolution	44,838.64
"4th. Land confirmed on east fork	11,661.80
"5th. Excess selected and approved under the act of 1841	35,473.54
	"556,686.74
"Leaving due the State	1,317.32
	"558,004.06

"This adjustment was accepted by Josiah A. Harvey, 'register of the State land office and commissioner on behalf of the State of Iowa,' and approved by Mr. Sec. Harlan May 29, 1866. The 1,317.32 acres were subsequently selected and approved to the State. The State, by the deliberate and recorded admission of her authorized agents, has thus received all the lands to which she was entitled on account of the improvement of said river. The adjustment is conclusive and final.

"As the State received indemnity for this identical tract, her claim on behalf of the Des Moines Company must be rejected without regard to adverse claims.

"2d. Having disposed of the claim under the river grant, I proceed to consider that of the railroad. I premise by saying that

78 while it appears the railroad company was notified of the appeal taken by Battin, they have failed to put in an appearance.

"The grant to the State for the purpose of aiding in the construction of railroads by said act of 1856 granted every alternate odd-numbered section for six sections in width on each side of each of the roads, with the right to select indemnity for such sections or parts thereof disposed of, with a proviso, reserving from the operation of the grant any and all lands reserved for the purpose of aiding in any of the internal improvements, etc.

"The Supreme Court of the United States, at the December term, 1866 (5 Wallace, 681), rendered a decision to the effect that said proviso operated to exclude from the railroad grant the odd-numbered sections within five miles of the Des Moines river, above the Raccoon Forks, and that the same passed to the State under the acts granting lands to aid in improving said river.

"At the date of that decision the Des Moines river grant had been finally adjusted.

"The State had, as before remarked, received all the land to which she was entitled on account thereof, and she is thus estopped from setting up a claim. Although this fact does not appear in the record of the case, I have shown that it is incontrovertibly established by the records of your office. It is the duty of the Department, in administering the acts of Congress, to give full effect to the settlement; otherwise the State would first obtain, in lieu of lands which she alleges had been 'otherwise disposed of,' an indemnity amounting to an equal quantity of such lands, and then when her right to land selected by way of indemnity had been recognized and confirmed to her she could assert her title to the lands she alleged had been disposed of. The effect of this would give her more than she originally claimed. The effect of that decision is, therefore, only to exclude from the railroad grant lands lying north of the fork, and to restore them to the public domain, at least so far as to subject them

79 to the operation of the pre-emption and homestead laws. Further, by act of June 2, 1864 (13 Stat., 98), amendatory of the grant of 1856, additional lands were granted to the State, and new provisions were engrafted upon the original law. One of these—the last proviso to the fourth section—excludes from the railroad grant any land 'settled upon and improved in good faith by a *bona fide* inhabitant under color of title derived from the United States or State of Iowa adverse to the grant,' and the railroad company are authorized to select other land in lieu of tracts so settled upon and improved. These *bona fide* inhabitants need not necessarily be pre-emption settlers, but they must be *bona fide* settlers claiming from the United States or State of Iowa. Consequently the State could have no valid claim under the railroad grant to any tract settled upon or improved in good faith by a *bona fide* inhabitant. Furthermore, it is certified by the executive of the State that the State has not transferred this tract, and he relinquishes any title or color of title to it by virtue of its having been approved and certified under that grant.

"3d. The remaining question to be determined is whether Battin's

claim can be allowed. It is not material to consider whether this land has ever been reserved so as to exclude it from the operation of the pre-emption laws. Even if such had been the case the difficulty would be removed by the proviso in the act of 1864, and it is only necessary to ascertain whether he is a '*bona fide* settler,' etc.

"From the evidence it would appear that Battin settled upon the land in good faith in October, 1857, having purchased the improvements of a prior settler, and has complied with the requirements of the pre-emption law and been allowed to enter the land.

"That entry is in accordance with law, and will be carried into patent.

80 "I am, sir, very respectfully, your obedient servant,

"O. H. BROWNING, *Secretary.*"

"Hon. Joseph S. Wilson, Commissioner General Office."

26] "DEPARTMENT OF THE INTERIOR,
"GENERAL LAND OFFICE, *May 21st*, 1868.

"C. C. Carpenter, Esq., register State land office, Des Moines, Iowa.

SIR: I have the honor to enclose herewith a copy of the decision of the hon. Secretary of the Interior dated May 9, 1868, relative to the Des Moines pre-emption cash entry, No. 21240, of Herbert Battin for S. W. qr. 3, 83, 27, by which you will perceive that the hon. Secretary awards said tract to Mr. Battin and rejects the claim of the Des Moines River Navigation Company and the Iowa Central Air Line railroad thereto.

"I would add that under date of the 13th inst. the hon. Secretary affirmed our decision of October 19, 1867, awarding N. h'f S.W. qr. and S.W. qr. 25, 85, 27, to Daniel C. Shepley, per cash entry No. 21235, as against the asserted claim of the Des Moines Company to the same tract.

"JOS. S. WILSON,
"*Commissioner.*"

27] "DEPARTMENT OF THE INTERIOR,
"GENERAL LAND OFFICE, *June 8th*, 1868.

"Register and receiver, Fort Dodge, Iowa.

"GENTLEMEN: This office has had under consideration the papers in connection with the pre-emption cash entry, No. 5207, of William Riley, covering the N. E. qr. of sec. 33, T. 89, R. 28, contested by the Dubuque & Sioux City R. R. Co. and the Des Moines Navigation Company.

81 "The testimony shows that Riley went upon said tracts in 1855 or '6 for the purpose of making a permanent settlement thereon; built a house in 1857 and '8 and ploughed and fenced a portion of his claim. Said pre-emptor, however, was deterred from making further improvements upon said tract by parties claiming under the Des Moines Navigation Co.

"Riley still cultivated said tract and was in possession thereof in July, 1860, when he filed D. S. 1602 thereon.

"In August, 1862, having enlisted in the military service of the United States, Riley again filed his D. S. 1764 as a notice that he still claimed said tracts, and to protect his rights while absent in the army.

"After his return from the service he again went upon his claim; built a house and now resides there with his family, and it is shown that his improvements are worth $1,500.

"The tract in question is embraced in the settlement of May 29, 1866, with the State of Iowa, and therefore neither the Des Moines Navigation Company *now* the Dubuque & Sioux City R. R. Co. can have any valid claim thereto, according to the principles laid down in the decision of the hon. Secretary of the Interior of May 9th, 1868, in the case of Herbert Battin from the Des Moines district. For your information a copy of said decision is herewith enclosed.

"Your decision awarding said tract to Riley is concurred in, and his entry approved, subject to appeal.

"You will notify the parties in interest and allow thirty days for appeal from the date of your letter.

"Please advise this office of the action taken at the expiration of the time specified, and in your reply refer to this letter as "G" by its date.

"Very respectfully, JOS. S. WILSON,
"*Commissioner.*"

82 Endorsements on said letter:

"FORT DODGE, IOWA, *June 17th*, 1868.

"I hereby acknowledge reception of notice of the within decision of the Commissioner of the General Land Office.

"WOLSEY WELLES,
"*Attorney for William B. Wells,*
"*Grantee of Des Moines Navigation & Railroad Co.*"

28] "DEPARTMENT OF THE INTERIOR,
"GENERAL LAND OFFICE, *Oct. 6th*, 1868.

"Register and receiver, Fort Dodge, Iowa.

"GENTLEMEN: Under date of June 8th, 1868, this office decided the contested case of William Reilly *vs.* The Dubuque & Pacific railroad in favor of Mr. Reilly and allowed thirty days for appeal.

"No appeal was taken by the railroad Co., and the Governor of Iowa was called upon for a relinquishment of the tract in question, N. E. ¼ sec. 33, T. 89, R. 28, the same having been approved to the State April 7th, 1863, for the use of said railroad company.

"The Governor of Iowa has formally relinquished said land to the United States by deed of release, dated September 12th, 1868, and therefore the cash entry, No. 5207, of William Reilly, dated February 27th, 1865, and covering said N. E. ¼, 33, 89, 28, has this day been relieved from suspension, approved, and filed for patenting.

"The patent in this case will be forwarded to N. P. Cousin, Esq., of this city, who has filed in this office the duplicate receipt.

"Very respectfully, JOS. S. WILSON,
"*Commissioner.*"

83 It was agreed in open court, for all the purposes of the case, that the lands the taxes on which are in controversy are lands within the limits of the grant known as the Des Moines river grant and were certified as such.

30] "WASHINGTON CITY, *May* 25, 1860.

"Hon. Joseph S. Wilson, Com'r General Land Office.

"SIR: Referring to the recent decision of the Supreme Court of the United States on the Des Moines river improvement claim, I herewith transmit a list, marked C, of my selections of this date, for and on account of the Dubuque & Pacific railroad and branch under the act of 15th May, 1856, of the interfering lands in the Fort Dodge district, Iowa, within the six and fifteen mile limits of said railroad grant heretofore held in suspension in our adjustment.

"The list discriminates the lands conditionally approved for the river grant for those not yet approved in any list, and embraces as follows:

"Whole quantity, 6-mile limits	59,418.22	acres.
"15-mile "	73,792.35	"
"Total	133,606.57	

"Of which the quantity not yet approved all west of the river is as follows:

"Not approved, 6-mile limits	15,450.47
"15 " "	16,214.12
"Total	31,664.59

"I also enclose a connected diagram, marked D, showing by the pink and yellow shades thereon the lands hereby selected.

"Please acknowledge the receipt hereof.

"Very respectfully, your obedient servant,

"WM. T. STEIGER,

"*Agent, etc.*"

84 Extract from letter dated June 11, 1860, and addressed by J. Thompson, Secretary of the Interior, to Hon. R. W. Johnson, chairman of the Committee on Public Lands, United States Senate.

31] "DEPARTMENT OF THE INTERIOR, *June* 11, 1860.

"SIR: Herewith I have the honor to transmit a copy of the report of the Commissioner of the General Land Office of the 7th inst. upon Senate joint resolution number 37 and the memorial relative to certain tracts of land heretofore certified to the State of Iowa as part of the grant made to said State by the act of August 8, 1846, and to return all the papers submitted with your several letters of the 28th ultimo and the 11th inst.

"The Commissioner has sent with his report copies of two letters addressed to him by W. T. Steiger, Esq., and one by Hon. Charles

Mason, agents of the State, and having reference to the lands in question, and which, it appears, would be proper to lay before you. The draft of a bill is also herewith enclosed, which was furnished to Hon. James W. Grimes in a letter addressed to him dated 22d ultimo, of which I also enclose a copy.

"In the matter of the grant for the improvement of the Des Moines river, as also for the later grants for railroad purposes, the Department deals directly with the State and not with parties claiming under her.

* * * * * * *

"Very respectfully, your obedient servant,

"J. THOMPSON, *Secretary.*

"Hon. R. W. Johnson, Ch'n Com. Pub. Lands, U. S. Senate."

32] "GENERAL LAND OFFICE, *June* 12, 1860.

"W. T. Steiger, Esq., Washington, D. C.

"SIR: I have to acknowledge the receipt of your letter of the
85 25th ult. enclosing lists and maps of lands selected and claimed under the railroad grant to Iowa by act of May 15th, 1856, for the Dubuque & Pacific railroad.

"The tracts in said lists are above the Raccoon Forks and within the lands that have been selected under the Des Moines river grant by act of 1846, and, in view of the recent decision of the Supreme Court affecting a title to lands under the grant above the said forks, the present lists are handed in by you.

"As the matter has been placed in train for congressional intervention, no action can be taken in the matter presented by you until Congress shall have time to consider and dispose of the subject.

"Very respectfully, your obedient servant,

"JOS. S. WILSON,

"*Commissioner.*"

33] "GENERAL LAND OFFICE, *July 7th*, 1860.

"Hon. J. Thompson, Sec. of Interior.

"SIR: I have the honor to return herewith the letter, dated 26th ultimo, from W. T. Steiger, agent, &c., asking that certain lands selected and claimed under the railroad grant act to Iowa of May 15th, 1856, may, without further delay, be certified to the State, and, pursuant to reference, respectfully submit that the lands referred to are embraced in certain lists filed in this office during the past month in view of the recent decision of the Supreme Court affecting a title to lands under the Des Moines river grant of 1846 above the Raccoon Forks. The tracts in said lists are above the Raccoon Forks and within the lands that have been selected under the above-mentioned river grant.

"Upon the receipt of these lists Mr. Steiger was advised that, as the matter had been placed in train for congressional intervention, no action could be taken by this office until Congress should have had time to consider and dispose of the subject.

86 "Without passing upon or, in fact, considering the question as to the right of the State under the railroad grant to these lands, which at the date of that grant had been withdrawn from sale or location, the fact that Congress has taken incipient action in the matter of itself justifies us in not recommending further proceedings by the Department until after the close of the next session of Congress.

"Very respectfully, your obedient serv't,

"JOS. S. WILSON,

"*Commissioner.*"

Extract of a letter dated November 3, 1860, addressed by J. Thompson, Secretary of the Interior, to Hon. George W. Jones, U. S. Senator from Iowa.

34] "DEPARTMENT OF THE INTERIOR,

"WASHINGTON, *Nov.* 3, 1860.

* * * * * * *

"For your information I herewith enclose copies of my letters of the 6th September last to the Commissioner of the General Land Office, and of the 1st October to Mr. Steiger, and in reply to your letter would state that, as respects those lands within the limits of the railroad grant which have already been certified to the State of Iowa by your predecessor under the previous grant of 8th August, 1846, in the absence of a formal and sufficient surrender by the State of all claims under the prior grant, and a direct demand from the State authorities for lists under the later grant, I deem it proper to suspend action at present so far as the claims interfere.

* * * * * * *

"Very respectfully, your obedient servant,

"J. THOMPSON, *Secretary.*

"Hon. Geo. W. Jones, of Iowa, present."

Stipulation No. 2.

87 It is hereby stipulated that the State of Iowa, pursuant to a settlement with the Des Moines Navigation and Railroad Company under the joint resolutions of its General Assembly entitled "Joint resolutions containing propositions for a settlement with the Des Moines Navigation and Railroad Company," approved March 22, 1858, conveyed on the 3d day of May, 1858, by its several deeds or patents of that date, to said D. N. & R. R. Co. 256,707.64 acres of land by specific descriptions; and on the 18th of May, 1858, for the purpose of covering any tracts or parcels that might have been overlooked or omitted in said deeds or patents, executed a further conveyance, conveying to said company by general description "all lands granted by act of Congress approved August 8, 1846, to the then Territory of Iowa to aid in the improvement of the Des Moines river which have been approved and certified to the State of Iowa by the General Government, saving and excepting all lands sold or conveyed, or agreed to be sold or conveyed, by the

State of Iowa, by its officers and agents, prior to the 23d day of December, 1853, under said grant." These several deeds or patents conveyed in all 256,188 acres, of which 53,367 acres are below and and 212,741 above the Raccoon Forks, and 212,558.27 acres thereof were embraced in the lands certified and approved to the State of Iowa on and prior to December 30, 1853, under the grant of August 8, 1846.

WRIGHT, GATCH & WRIGHT,
Sol'rs for Complainant.
JOHN F. DUNCOMBE,
Attorneys for Defendants.

STATE OF IOWA, *Webster County:*

I, Jonathan Hutchison, of lawful age, being duly sworn, state that I was treasurer of Webster county, Iowa, from January, 1868, until January, 1878; that I am familiar with the taxes claimed in the above-stated cause to be illegal from 1859 to 1866, inclusive.

88 That neither complainant, Edwin C. Litchfield, John Browne, his agent, or any other person ever offered to pay the taxes for any or all the years from 1859 to 1866, inclusive, with interest and penalties, on the lands of complainant, or any of said land.

Mr Browne offered, I think, in 1873, to pay the taxes for 1862, '3, '4, '5, and 1866, with ten per cent. interest, if I would leave the taxes of 1859, 1860, and 1861 out of the receipts.

This I refused to do, as the only authority I had to take the taxes from 1862 to 1866, inclusive, was conditioned on the settlement of the taxes of 1859, 1860, and 1861, and these taxes Mr. Browne refused to pay, and thus ended the proposition of the county to make such a compromise.

J. HUTCHISON.

Sworn to and subscribed before me in my presence by J. Hutchison this 5th day of September, A. D. 1878.

Witness my hand and official seal this day.

[SEAL.] J. F. DUNCOMBE,
Notary Public, Webster County, Iowa.

The following extracts, read in evidence by the defendant, are from the printed transcript in the said homestead case in 17 Wallace, 157:

Bond for Cost.

Docket entries and extracts from minutes Supreme Court of the United States in Samuel G. Wolcott, plaintiff in error, *v.* The Des Moines Navigation and Railroad Co.

Docket Entries.

Supreme Court of the United States. December Term, 1864.

89 THE DES MOINES NAVIGATION & RAILROAD COMPANY, Plaintiff in Error, *vs.* CALVIN BURR. } No. 336.

In error to the circuit court of the United States for the southern district of New York.

Chas. Tracy; P. Smith, for intervener.

1864, Dec. 10.—Record received and filed.

No. 221. December term, 1865. Docket entries continued:

1866, Feb. 8.—Motion of Mr. Allison for leave to intervene filed.
1866, Feb. 8.—Affidavit of J. M. McKinley filed.
" 13.—Leave granted to the Dubuque & Sioux City R. R. Co. to intervene, &c.
1866, Feb. 21.—Brief of P. Smith, for intervener, filed.

No. 133, of December term, 1869. Docket entries continued:

1866, Dec. 14.—Mr. J. F. Duncombe filed a motion to intervene, &c.
1866, Dec. 17.—Leave granted Mr. Duncombe to appear and file printed argument.
1866, Dec. 17—No. 204 to be argued with this case.
1867, Feb. 8.—Submitted with No. 204.
" May 13.—Reversed with costs and a venire awarded.

Extract from Minutes.

Supreme Court of the United States. Dec. Term, 1865.

THE DES MOINES NAVIGATION AND RAILROAD COMPANY, Plaintiff in Error,

vs.

CALVIN BURR.

* * * * * * *

On consideration of the motion made and affidavit filed in this cause on the 8th instant, it is now here ordered by the Court that leave be, and the same is hereby, granted counsel of the
90 Dubuque and Sioux City Railroad Company to appear and be heard on the argument when this cause is reached.
13 February, 1866.

No. 133, of December Term, 1866.

* * * * * * *

THE DES MOINES NAVIGATION AND R. R. Co., Plaintiff in Error,
vs.
CALVIN BURR.

On consideration of the motion of Mr. Duncombe for leave to intervene, etc., in this case, it is now hereby ordered by this Court that leave be, and the same is hereby, granted Mr. Duncombe to intervene in behalf of the Iowa Homestead Company in the argument of this cause, and to file a printed argument.

17 December, 1866.

THE DES MOINES NAVIGATION AND RAILROAD COMPANY, Plaintiff in Error,
vs.
CALVIN BURR.

Ordered by the Court that No. 204, Samuel G. Wolcott, plaintiff in error, *vs.* Des Moines Navigation and Railroad Company, be argued by counsel, if desired, with No. 133, when reached in the regular call of the docket.

17 December, 1866.

THE DES MOINES NAVIGATION AND RAILROAD COMPANY, Plaintiff in Error,
vs.
CALVIN BURR.
} No. 133.

This cause was submitted to the Court on the record and printed argument by Mr. Smith, of counsel for interveners, and stipulation of counsel filed to be considered with No. 204, submitted on printed arguments at the last term of this Court.

8 February, 1867.

91 Supreme Court of the United States. December Term, 1866.

THE DES MOINES NAVIGATION AND RAILROAD COMPANY,
Plaintiff in Error,
vs.
CALVIN BURR.
} No. 133.

In error to the circuit court of the United States for the southern district of New York.

This cause came on to be heard on the transcript of the record from the circuit court of the United States for the southern district of New York, and was argued by counsel.

On consideration whereof it is now here ordered and adjudged by this Court that the judgment of said circuit court in this cause be, and the same is hereby, reversed with costs; and that this cause be,

and the same is hereby, remanded to the said circuit court, with directions to award a *venire facias de novo*.

Per Mr. Justice Nelson.

Mr. Justice Miller took no part in the decision of this case.

True copies of docket entries, extract from minutes, and judgments.

Test: [SEAL.] D. W. MIDDLETON,
Clerk Supreme Court U. S.

Supreme Court of the United States. December Term, 1866.

THE DES MOINES NAVIGATION AND RAILROAD COMPANY, Plaintiff in Error, vs. CALVIN BURR. } No. 221.

In error to the circuit court of the United States for the southern district of New York.

The Dubuque & Sioux City Railroad Company, a corporation, etc., by Wm. B. Allison, its attorney, now comes and moves the
92 Court for leave to intervene in the above-entitled cause, and also for leave to file an argument in same for reasons set forth in affidavit filed herewith and made a part hereof.

DUBUQUE & SIOUX CITY
RAILROAD COMPANY,
By WM. B. ALLISON, *Its Attorney.*

True copy. Test:
[L. S.]
D. W. MIDDLETON,
Clerk Supreme Court U. S.

Supreme Court of the United States. December Term, 1865.

THE DES MOINES NAVIGATION & RAILROAD COMPANY, Plaintiff in Error, vs. CALVIN BURR. } No. 221.

In error to the circuit court of the United States for the southern district of New York.

I, James McKinley, on oath say that I am an attorney and counsellor at law, and am assistant attorney of the Dubuque & Sioux City Railroad Company; that within the past few days, and not before, I have had an opportunity to examine the record in the case above named; that the said railroad company are materially interested in obtaining a correct decision of the principal point raised in said cause, and that I verily believe a decision of the point against the above-named defendant in error would prejudice the interest of said Dubuque & Sioux City R. R. Company, although not a party to the record in the above-named case. The decision made by the court below (Hon. Wm. D. Shipman) is the point on which rests the title to above seventy-seven thousand acres of land granted by Congress to aid in the construction of said Dubuque & Sioux City railroad.

Further, that I have reason to fear that said Burr is not a *bona fide* litigant, but, on the contrary, is desirous of obtaining a
93 decision against himself with a view to prejudicing the title of the Dubuque & Sioux City Railroad Company and their grantees.

Signature to the foregoing affidavit.

(Signed) JAMES M. McKINLEY.

Subscribed and sworn to before me, the clerk of the district court of Dubuque county, Iowa, this 1st day of February, 1866.

Witness my hand and official seal.

[SEAL.] (Signed) M. LEPPER, *Clerk.*

True copy. Test:

[SEAL.] D. W. MIDDLETON,
Clerk Sup. Court U. S.

(Endorsed as follows:) The Des Moines Navigation & Railroad Company, plaintiff in error, *vs.* Calvin Burr. Affidavit of James M. McKinley. Filed Feb., 1866. George B. Corkhill, clerk.

Motion on Behalf of the Iowa Homestead Company and Their Grantees to Intervene for the Purpose of Argument.

In the Supreme Court of the United States. Dec. Term, 1866.

THE DES MOINES NAVIGATION & RAILROAD COMPANY, Plaintiff in Error,
vs.
CALVIN BURR, Defendant in Error.
} No. 133. Land.

Now, to wit, December 14, 1866, come the Iowa Homestead Company and their grantees, of the State of Iowa, and by their attorney, John F. Duncombe, move the Court to permit said parties to intervene in this cause for the purpose of argument on the part of the defendant in error, and for cause state—

1. That said company and their grantees are directly interested in the decision of this cause in this, to wit, said company and their grantees claim to be owners in fee-simple of the land named in the pleadings, and over fifty thousand acres of other lands, the
94 title to which is involved in the decisions of the legal questions involved in this suit.

(Signed) J. F. DUNCOMBE,
Attorney for Intervener.

True copy. Test:

[SEAL.] D. W. MIDDLETON,
Clerk Supreme Court U. S.

Endorsed as follows: Supreme Court U. S. December term, 1866. Des Moines Navigation & Railroad Company, plaintiffs in error, *vs.* Calvin Burr. Motion on part of Iowa Homestead Company to intervene for argument. Filed 14th December, 1866. Granted J. F. Duncombe, for interveners.

C.—Docket Entries and Extracts from Minutes Supreme Court United States in The Des Moines Navigation & Railroad Company, Plaintiff in Error, vs. Calvin Burr.

Supreme Court of the United States. December Term, 1865.

SAMUEL G. WOLCOTT, Plaintiff in Error,
vs.
THE DES MOINES NAVIGATION & RAILROAD CO. } No. 303.

In error to the circuit court of the United States for the southern district of New York.

J. W. Gilbert; P. Smith (for intervener); Chas. Tracy; Litchfield.

Docket entries:

1865, Nov. 27.—Record received and filed.
" Dec. 21.—Stipulation to submit filed.
" " Brief of J. W. Guilbert, for the plaintiff in error, filed.
" " Brief of Litchfield, for the def't in error, filed.
1866, Jan. 2.—Submitted under 20th rule.
" Feb. 8.—Motion of Mr. Allison for leave to intervene and also for leave to file printed argument.
95 1866, Feb. 8.—Affidavit of J. M. McKinley filed.
" " 13.—Leave granted intervener to file argument before first of March.
1866, Feb. 21.—Brief of P. Smith, for intervener, filed.
" " 26.—On motion of Mr. Cook, leave granted him to file argument before 1st March.
" Mar. 12.—Ordered to be continued to the next term, with leave to any of the parties to file additional arguments.
" " 23.—Brief of Mr. B. C. Cook, for intervener, filed.

No. 204, of December term, 1866. Docket entries continued:

1866, Dec. 4.—Reply brief of Litchfield filed.
" " 17.—Ordered that counsel have leave to argue this case with No. 133, if desired.
1867, May 13.—Adjudged to be affirmed with costs.

Extracts from Minutes.

Supreme Court of the United States. December Term, 1865.
No. 303.

* * * * * * *

SAMUEL G. WOLCOTT, Plaintiff in Error,
vs.
THE DES MOINES NAVIGATION & RAILROAD CO. } No. 303.

This cause was submitted to the consideration of the Court on the record and printed arguments by Mr. Guilbert, of counsel for the plaintiff in error, and by Mr. Litchfield, for the defendant in error, under the 20th rule.

2d January, 1866.

SAMUEL G. WOLCOTT, Plaintiff in Error,
vs.
THE DES MOINES NAVIGATION & RAILROAD CO. } No. 303.

On consideration of the motion made and affidavit filed in this cause on the 8th instant, it is now here ordered by the Court
96 that leave be, and the same is hereby, granted counsel of the Dubuque & Sioux City Railroad Company to file and submit printed arguments in this cause at any time before the first day of March next.

13th February, 1866.

SAMUEL G. WOLCOTT, Plaintiff in Error,
vs.
THE DES MOINES NAVIGATION & RAILROAD CO. } No. 303.

On motion of Mr. B. C. Cook, leave granted him to file a printed argument in this cause by the first Monday of March next.

26th February, 1866.

December Term, 1866.

SAMUEL G. WOLCOTT, Plaintiff in Error,
vs.
DES MOINES NAVIGATION & RAILROAD CO. } No. 204.

Ordered by the Court that this cause be argued by counsel, if desired, with No. 133, when reached in the regular call of the docket.

Supreme Court of the United States. December Term, 1866.

SAMUEL G. WOLCOTT, Plaintiff in Error,
vs.
THE DES MOINES NAVIGATION & RAILROAD CO. } No. 204.

In error to the circuit court of the United States for the southern district of New York.

This cause came on to be heard on the transcript of the record from the circuit court of the United States for the southern district of New York, and was argued by counsel.

On consideration whereof it is now here ordered and ad-
97 judged by this Court that the judgment of said circuit court in this cause be, and the same is hereby, affirmed with costs.

Per Mr. Justice Nelson.

13th of May, 1867.

Mr. Justice Miller took no part in the decision of this case.

True copies of docket entries, extract from minutes, and judgments.

Test:

[SEAL.]

D. W. MIDDLETON,
Clerk Supreme Court U. S.

Supreme Court of the United States. December Term, 1865.

SAMUEL G. WOLCOTT
vs.
THE DES MOINES NAVIGATION & RAILROAD CO. } No. 303.

The counsel for the plaintiff and the counsel for the defendant hereby agree to submit, and do submit, this case upon printed arguments.

Dated December 18, 1865.

(Signed) J. W. GILBERT,
Of Counsel for Plaintiff.

(Signed) EDWIN C. LITCHFIELD,
Of Counsel for Defendant.

True copy. Test:
[SEAL.]
D. W. MIDDLETON,
Clerk Sup. Court U. S.

Endorsed as follows: Stipulation to submit. Filed December 21, 1865.

98 Supreme Court of the United States. December Term, 1865.

SAMUEL G. WOLCOTT, Plaintiff in Error,
vs.
DES MOINES NAVIGATION & RAILROAD CO. } No. 303.

In error to the circuit court of the United States for the southern district of New York.

The Dubuque and Sioux City Railroad Company, a corporation, and by Wm. B. Allison, its attorney, now comes and moves the Court for leave to intervene in the above-entitled cause as a party thereto, and also for leave to file an argument in same for reasons set forth in affidavit filed herewith and made a part hereof.

DUBUQUE & SIOUX CITY
RAILROAD COMPANY,
(Signed) By WM. B. ALLISON, *Its Att'y.*

True copy. Test:
[SEAL.]
D. W. MIDDLETON,
Clerk Sup. Court U. S.

Endorsed as follows: No. 303. Samuel G. Wolcott, plaintiff in error, *vs.* Des Moines Navigation and Railroad Company. Motion for leave to intervene on behalf of Dubuque & Sioux City Railroad Company. Filed 8th February, 1866. Wm. B. Allison.

Supreme Court of the United States. December Term, 1865.

SAMUEL G. WOLCOTT, Plaintiff in Error,

vs.

DES MOINES NAVIGATION & RAILROAD CO.

In error to the circuit court of the United States for the southern district of New York.

I, James M. McKinley, on oath say that I am an attorney and counsellor at law, and am assistant attorney for the Dubuque & Sioux City Railroad Company; that within the past few
99 days, and not before, I have had an opportunity to examine the record in the above-named case; that, to my mind, the said record shows that the attorneys of said Wolcott either did not fully understand their case or the nature of the party opposed to them, or had been instructed not to litigate the case in good faith; that the question involved in said case is one on which depends the title which the Dubuque & Sioux City Railroad Company acquired to about seventy-seven thousand acres of land to aid in the construction of said road; that a final decision of the above-named case against the plaintiff in error would tend to greatly prejudice the said Dubuque & Sioux City Railroad Company, although they are not a party to the said case; that I have reason to fear the decision of the court below (near bottom of page 61 of the record) was obtained on substantially an *ex parte* presentation of the case, and is greatly prejudicial to the interest of the Dubuque & Sioux City Railroad Company, and is contrary to what would have been the decision on a proper presentation and argument of the case. And, as aforesaid, that an affirmance of the judgment of the court below would prejudice the title acquired by said Dubuque & Sioux City Railroad Company to said seventy-seven thousand acres of land and the title to their grantees.

(Signed) JAMES M. McKINLEY.

Subscribed and sworn to by James M. McKinley before me, clerk of the district court of Dubuque, Iowa, February 1, 1866.

Witness my hand and official seal.

[SEAL.] (Signed) M. LEPPER, *Clerk.*

True copy. Test:

[SEAL.] D. W. MIDDLETON,
Clerk Sup. Court U. S.

Endorsed as follows: No. 303. Samuel G. Wolcott, plaintiff in error, *vs.* Des Moines Navigation & Railroad Company. Affidavit of James M. McKinley. Filed 8th February, 1866.

100 *CI.—The Argument of Platt Smith in Behalf of the Dubuque & Sioux City Railroad Company in Wolcott vs. The Des Moines Navigation & Railroad Company.*

Supreme Court of the United States. December Term, 1866.

SAMUEL G. WOLCOTT, Plaintiff in Error,
vs.
DES MOINES NAVIGATION & R. R. Co., Def'ts in Error.

Argument of Platt Smith, who intervenes in behalf of the Dubuque & Sioux City Railroad Company.

Both of these cases come up from the circuit court of the United States from the southern district of New York. They are both upon the same identical issues, and substantially upon the same state of facts. They are both suits brought against the Des Moines Navigation & Railroad Company to recover damages for alleged failure of title to certain lands in Iowa conveyed by the defendant below to the plaintiffs below by warranty deed. The plaintiffs below are citizens of the State of New York, and the defendant below is a citizen of Iowa.

The lands in dispute lie within five miles of the Des Moines river and above the mouth of the Raccoon Forks and in the alternate odd-numbered sections; and they also lie within the six and fifteen mile limits of the Dubuque & Sioux City Railroad Company, and are included in the act of Congress granting lands to Iowa, passed May 15th, 1856. The Des Moines Navigation & Railroad Company claim title to these lands under an act of Congress, passed August 8th, 1856, granting lands to Iowa to aid in the improvement of the navigation of the Des Moines river, and under grants and deeds from the State of Iowa to said company, and also under a joint resolution of Congress passed March 2d, 1861, and under an act of Congress passed July 11th, 1862.

The Dubuque & Sioux City Railroad Company claim title to the same lands under an act of Congress passed May 15th, 1856,
101 granting lands to Iowa to aid in the construction of certain railroads, and grants from the State of Iowa to the Dubuque & Pacific Railroad Company and conveyances from said company to the Dubuque & Sioux City Railroad Company.

Three questions are raised by the records in these causes:

First. Did the act of Congress passed August 8th, 1846, grant the lands in dispute to the State (then Territory) of Iowa for the purposes specified in the act?

Second. Did the act of Congress of May 15th, 1856, grant the lands in dispute to the State of Iowa for the purpose specified in said act, and did the act vest the title to said lands in dispute in the State of Iowa, or were the lands in dispute reserved to the United States, so that said act of May 15th, 1856, did not operate to vest them in the State of Iowa?

Third. Did the joint resolution of Congress passed March 2d, 1861, or the act of July 12th, 1862, pass the title to the lands in dispute to the State of Iowa and through said State to the Des Moines Navigation & Railroad Company?

Mason Thompson—Deposition.

I am a director of the Dubuque & Sioux City Railroad Company. I have been connected with such direction four or five years. I am also a director of the Iowa Homestead Company, and have been so during the same period. I acted as president *pro tem.* of that company for a short term during the absence of the president. The board of directors of the Iowa Homestead Company have not held any separate meetings as such, and the directors of both companies are the same persons. I understand that the railroad company owns a majority of the stock of the homestead company, and has controlled its affairs ever since my connection with the company, and, as the railroad company own the lands, any discussion in regard to them or any matters in reference to the homestead company have been had at the meetings of directors of the Dubuque & Sioux City Railroad Company.

102 Q. State where the plaintiff, Edward K. Goodnow, resides, and what official or other business relation, if any, he sustains to the said homestead or said railroad company.

A. He is a partner of Mr. Jesup, who is president of the Dubuque & Sioux City Railroad Company, and has an office with him. I do not know where he resides. I do not know that he is officially connected with either of said companies. I know he is not an officer or director of either of said companies.

Q. State whether or not you were present when the assignment by either said homestead company or said railroad company to Goodnow was made; and, if so, whether said Goodnow was present, and when and where were said assignments or either of them made.

A. I know nothing in respect to the matters inquired of.

Q. State by what authority the assignment of the cause of action herein to the plaintiff Goodnow was made; whether or not it was authorized at and by any meeting either of the stockholders, directors, or any committee of the assignor; and, if so, by which and when, and where was such meeting held and who composed the same?

A. I know nothing in respect of the matters so inquired of and cannot answer that question.

J. B. Thompson's Deposition.

I only know him (the plaintiff, Edward K. Goodnow) as a partner of Morris K. Jesup & Co. I do not know him in connection with either of these companies.

I know nothing about the assignment of the claim sued upon to plaintiff, and was not present when it was made; don't know by what authority it was made.

The Iowa Homestead Company held a warrantee deed from the Dubuque & Sioux City Railroad Company, and in addition they held an agreement that they (the railroad company) would defend the title at their own expense, which they did.

103 *Morris K. Jesup's Deposition.*

He (Edward K. Goodnow, the plaintiff) resides in Brooklyn. I am not aware that he sustains any official relations with either the land company or the railroad company.

Q. State whether or not you were present when the assignment by either said homestead company or said railroad company to Goodnow was made; and, if so, whether said Goodnow was present, and when were said assignments or either of them made.

A. I do not recollect anything about it.

Q. State whether or not you arranged with said Goodnow for the making to him of either of said assignments; and, if so, state whether the same was done orally or by correspondence, and what interest, if any, said Goodnow has in the claims assigned to him or either of them.

A. Not that I remember; I have no recollection of any arrangement between Mr. Goodnow and the Iowa Homestead Company or the railroad company at all.

Q. State by what authority the assignment of the cause of action herein to the plaintiff Goodnow was made; whether or not it was authorized at and by any meeting, either by the stockholders, directors, or any committee of the assignor; if so, by which and when and where was such meeting held; who composed the same?

A. I have no recollection of anything of the kind; I presume, however, if anything of the kind was done it was done by the board of directors; I remember nothing about it.

I do not remember of any record of the proceedings authorizing said assignment having been made.

J. B. Dumont's Deposition.

I have been assistant secretary of the Dubuque & Sioux City Railroad Company since some time in 1864, and treasurer
104 since some time in June, 1876, and secretary of the Iowa Homestead Company since some time in 1873.

Q. State whether or not at any time during the years 1874, 1875, and 1876 you had a conversation with George Crane, Esq., at the city of Dubuque, Iowa, with respect to the commencement of a suit or suits for the recovery of the taxes or any part of them paid by the Iowa Homestead Company and said railroad company from the year 1859 to the year 1872, both inclusive, or either of them; if so, state what was said in said conversation about assigning the claims, respectively, of said companies, or either of them, to Mr. Edward K. Goodnow or to any other person, that the same might be sued in name of the assignor.

A. I have no recollection of any such special conversation; Mr. Crane was counsel of the Dubuque & Sioux City Railroad Company, and it is not unlikely that I had some conversation with him; I do not remember what was said. The plaintiff Goodnow resides in Brooklyn, N. Y., and sustains no official or business relations with either company. I do not remember being present when the assign-

ments were made; I do not know whether he (Mr. Goodnow) was present or not; I do not remember when they or either of them were made.

Q. State by what authority the assignment of the cause of action herein to the plaintiff Goodnow was made; whether or not it was authorized by any meeting either of the stockholders, directors, or of any committee of the assignor; and, if so, by which and when and where was such meeting held, and who composed the same.

—. The records of the company are in Dubuque; I do not know; I cannot state by what authority. I cannot state whether any such record of the proceedings authorizing said assignment was made, as the records of the company are in the Dubuque office.

105 *John Browne's Deposition.*

I have charge of the defendant's lands in Iowa, the taxes on which are in controversy, as her agent. I have been the defendant's agent since the summer of 1866.

As the defendant's agent, my business has been to pay the taxes assessed on her lands, to sell the same and receive payments therefor, and give them my care in attending to their general interest.

As such agent I was required, and it was my duty, to attend to all matters of litigation in this State affecting the lands of defendant in any manner.

I had notice and accepted service of the original in the suit of The Iowa Homestead Company against The Des Moines Navigation & Railroad Company and others, which was commenced in the district court of Webster county and was removed to the circuit court of the United States by counsel for the non-resident owners on my affidavit bond, and was finally determined on appeal in the Supreme Court of the United States, at the December term thereof, 1872, and reported in 17 Wallace, page 153.

During the pending of that suit and others, involving the title to lands known as the Des Moines river lands, I had charge, as agent, of the interests of nearly all of the non-resident owners, including those of the defendant, as well as those of the Des Moines Navigation & Railroad Company. I retained counsel and paid all the expenses and fees to counsel incurred by the litigation. In all of which the defendant's lands were protected by me, as her agent, the same as were the lands of all the other non-residents who had derived a title from the Des Moines Navigation & Railroad Company, and for whom I was agent.

To pay expenses and counsel fees I assessed the non-resident owners, including defendant and her husband, according to their interests in the lands involved in the controversy, and the
106 defendant's portion of the assessment was included in charges made in my accounts with the defendant's husband, amounting in all to about $1,400. These charges were made with the knowledge and consent of defendant and her husband.

At the December term, 1859, the Supreme Court of the United States, in the case of Litchfield *vs.* The Dubuque and Pacific Rail-

road Company, decided that the Des Moines river grant did not extend north of the Raccoon Forks of the Des Moines river, and from that time until the decision in the Wolcott case by the United States Supreme Court, in 1867, the title to the river lands was involved in great doubt and such uncertainty that the treasurer and other officers of Webster county deemed it inexpedient and unsafe to sell the same for delinquent taxes or otherwise seek to enforce payment.

During all the time named this was the settled policy of the county. On the 21st of September, 1860, E. G. Morgan, then treasurer of said county, and as such treasurer, sent to me, as agent of the Des Moines river lands, a letter, a copy of which is hereto attached, marked Exhibit A, and made a part of this answer.

On the 17th of June, 1860, Jonathan Cattell, then auditor of the State of Iowa, as such auditor, addressed a letter to the then treasurer of Hamilton county as to the proper course to be pursued in respect to the same description of land in that county, a copy of which is hereto attached, marked Exhibit B, and made part of this answer; and said Cattell, as such auditor, addressed a circular letter, in substance the same, to the treasurers of other counties in which lands of the same description were located. The instructions therein contained continued to be acted upon until after the decision in the case of Wolcott *vs.* The Des Moines Navigation and Railroad Company, in 1867, in all the counties in which any of the so-called river lands were located, and none of these lands were sold for
107 taxes during any of said years, excepting through inadvertence, and when so sold in Webster county in some instances the sales were cancelled and money refunded to purchaser. During all of the time named the title to all of the land known as the river lands and also embraced within the limits of the so-called railroad grant was regarded by defendant as being so uncertain as to render it extremely hazardous and imprudent to pay the taxes thereon, and such uncertainty was the reason why the taxes were not paid by defendant. From the time of the decision of Litchfield *vs.* The Dubuque and Pacific Railroad Company until that of Wolcott *vs.* The Des Moines Navigation and Railroad Company the county of Webster, its officers and citizens generally, acquiesced with the agents and officers of the United States and the State of Iowa in considering and treating said lands as having passed to the State under the railroad grant of May 15, 1856, and the certificates issued thereunder to the State in April, 1863.

After the issuance of the above certificates under the railroad grant the claimants thereunder began to exercise ownership of the lands and to pay the taxes thereon, which the treasurer received, knowing them to be paid under such claim of ownership.

In 1867, after the Wolcott decision in behalf of Litchfield and other owners, I offered to pay the county all the taxes claimed to be delinquent from the year 1859 to 1866, inclusive, without any interest or penalty thereon, such payment to be in full for the amount claimed by the county. We claimed the taxes to be illegal, and our offer was made by way of compromise and to remove the cloud by reason of the taxes being on the books of the county.

This offer the county rejected. In the spring or summer of 1868 I offered to pay the taxes of 1862, 1863 and 1864, 1865 and 1866, with interest at six per cent., which the county rejected except on condition that the taxes of 1859, 1860, and 1861 should also be paid at the same time. At other times, in 1869 and subsequently,
108 other offers were made to the county with a view of compromise, all of which were rejected. In October, 1870, the board of supervisors passed a resolution authorizing the treasurer to receive the taxes, except State taxes of 1859, 1860, and 1861, assessed and unpaid, with ten per cent. interest yearly, upon the terms stated in the resolution, a copy of which is marked No. —, of documents in proof, but leaving the taxes of 1862, 1863, 1864, and 1865 to be paid with the penalty interest as claimed by the county.

These were the only terms upon which the county at that time would receive payment. In April, 1872, an effort was again made toward a settlement or compromise, and at that time the board of supervisors passed a resolution authorizing the treasurer to receive the taxes of 1859, 1860, 1861, and 1862, with six per cent. interest, and the taxes of 1863, 1864, 1865, and 1866, with ten per cent. interest upon the terms stated in the resolution, a copy of which is marked No. —, documents in proof, and expressly refused to accept payment on any other terms. Subsequently the time of payment named in that resolution was extended to April 1, 1873.

In March, 1873, I went to the office of the treasurer of Webster county to give him a list of all the lands now in controversy and offered to pay the amount due on them for the taxes of 1862, 1863, 1864, 1865, and 1866, and asked the treasurer to take the pay and make out the receipts for the same, and the treasurer said he would do so as soon as possible.

The list was a long one and would require labor and time to make out the receipts, which he said would be ready in some two or three weeks, and requested me to come again for them.

Within two or three weeks I went with the money to pay for the receipts of the taxes for the years named, and again offered to pay the same, but the treasurer then declined to accept the payment of the taxes of 1862, 1863, 1864, 1865, and 1866, except upon condition that I should also pay the taxes of 1859, 1860, and 1861. He
109 also said he had commenced making out the receipts for 1862 to 1866, inclusive, and had them partly completed when the supervisors or auditor had come to his office and advised him not to accept the taxes of 1862 to 1866 except the taxes of 1859 to 1861, inclusive, were also paid at the same time. I had the money there ready to pay, and offered to pay, and the treasurer made no objection to my offer or tender of money, except that he refused to receive the taxes of 1862 to 1866 unless the taxes of 1859 to 1861, inclusive, were paid at the same time, such being the order of the board of supervisors.

So far as the lands of this defendant are involved in this controversy as to taxes, I am not aware that any of them were situated within the timber belt, and also within the limits of the R. R. Co. grant, excepting lands in the south half of 5, 88, 28, about 252

acres, and 40 acres in 15, 88, 28, and 80 acres in 17, 88, 28, and in my opinion the damages to these lands from waste and trespass could not be less than $4,000.

Cross-examination:

Cross 26. I know from our notes of the examination made of these lands and other timber lands in our grant that these were valuable timber lands in 1856, 1857, and 1858, and that when I examined them personally in 1867, after the Wolcott decision, they were found to be depleted of their timber.

Cross 32. I never saw anybody committing waste upon said lands.

Cross 33. I believe I have not said in this examination that any R. R. company took the timber from said lands, but it is true the Iowa Homestead Company sold lands and its purchasers removed the timber therefrom.

The foregoing is all the evidence offered or introduced by the parties or either of them at the final trial or hearing of said suit.

After due consideration the court rendered the following decree:

110 EDWARD K. GOODNOW

vs.

GRACE H. LITCHFIELD, Edwin C. Litchfield Substituted as Administrator.

This cause having been duly submitted to the court on the 13th day of March, A. D. 1883, it was agreed by the parties and ordered by the court that said cause be taken under advisement; that the decision of the court therein be rendered in vacation, and that the decree be entered up as of the March term of the court.

And now, on the second day of the October —, 1883, the court finds that the plaintiff is entitled to recover the principal sums shown by the evidence to have been paid, but holds and decides that he is entitled to recover interest thereon only from the commencement of this suit—that is, the 5th day of August, 1876.

The court also finds that the plaintiff is entitled to a lien upon the lands described in the petition to secure the payment of said claim, but holds and decides that each tract of land, as hereinafter described, is liable for only the taxes paid thereon, and interest from the 5th day of August, 1876.

It is, therefore, ordered and decreed that the plaintiff, Edward K. Goodnow, have and recover of and from the said Edwin C. Litchfield, as administrator of the estate of Grace H. Litchfield, deceased, the sum of $4,517.53, and interest thereon at six per cent. per annum from the 13th day of March, 1883, and costs of suit, taxed at $.—

And afterwards the plaintiff Goodnow gave due notice and perfected his appeal to the supreme court of Iowa from the decision of the said district court.

GEORGE CRANE,
Attorney for Appellant.

111 *Assignment of Errors.*

1. The court erred in not computing interest from time of payment of taxes to county.

2. The court erred in not giving plaintiff a lien on all the land for all the taxes.

3. The court erred in not giving plaintiff the whole relief prayed for.

GEORGE CRANE,
Attorney for Plaintiff.

112 & 113 And upon said abstract are endorsements and stipulations as follows:

"Received copy of this abstract this 1st day of Nov., 1883.
C. H. GATCH,
Att'y for Defendant."

"It is hereby stipulated and agreed that this cause, including the cross-appeal of the defendant, due notice of which is hereby admitted, may be submitted to & tried by the supreme court of Iowa on this record and abstract, and the assignment of errors hereafter to be filed by defendant.

Signed this 18 day of Dec., 1883.

GEORGE CRANE,
Att'y for Pl'ff.
C. H. GATCH,
Att'y for Def't.

George Crane, att'y for pl'ff, signed after interlineation."

"It is hereby stipulated, agreed, and admitted that the foregoing, from page one to page 111, is all the evidence offered or in-
114 troduced by the parties at the trial of the above-entitled suit of Edward K. Goodnow *vs.* Grace H. Litchfield.

Signed this 1st day of Nov., 1883.

GEORGE CRANE,
Att'y for Pl'ff.
C. H. GATCH,
Att'y for Def't."

And afterwards, on the 29th day of January, 1884, the pl'ff in error (def't below) filed in the office of said clerk an additional abstract, the same being in the words and figures following, to wit:

115 *Additional Abstract.*

In the Supreme Court of Iowa. January Term, Des Moines, A. D. 1884.

E. K. GOODNOW *vs.* GRACE H. LITCHFIELD.

Geo. Crane, attorney for appellant; C. H. Gatch, attorney for appellee.

On the 19th day of January, 1877, before filing answer the defendant filed the following demurrer:

Comes now the defendant, Grace H. Litchfield, and demurs to the petition herein, and for ground of demurrer states the following:

1. The facts stated in said petition do not entitle the plaintiff to the relief demanded.

2. The plaintiff has not legal capacity to maintain the action.

Which demurrer the court overruled; to which ruling the defendant at the time excepted.

On the 22d day of May, 1882, plaintiff filed the following motion and showing for change of venue:

116 I, Edward K. Goodnow, being first duly sworn, depose and say that I am plaintiff in the above-entitled cause; that D. D. Miracle, judge of this court, is, to the best of my knowledge and belief, so prejudiced against me that I cannot obtain a fair trial before him, and that the existence of such prejudice was not known to me before the last continuance of this cause.

E. K. GOODNOW.

Duly verified.

John I. Mullany, Edwin B. Farley, and W. P. Dyer, being first duly sworn, depose and say that they are not related to the plaintiff in this action nearer than the fourth degree, nor do they nor any of them stand in the relation of servant, agent, or employé of said plaintiff, nor are they in any manner interested in the result or issues of this action, and they do verily believe that the Hon D. D. Miracle, judge of the circuit court of Iowa in and for Webster county, is so prejudiced against said plaintiff that he cannot obtain a fair trial of said cause before said judge, and such prejudice was unknown to plaintiff before the last continuance.

JOHN I. MULLANY.
EDWIN B. FARLEY.
W. P. DYER.

Duly verified.

Which motion was on the same day by the court sustained, and defendant at the time excepted to the order sustaining the same.

On the trial of the cause it was in open court agreed by the parties that under the statute of limitations of the State of New York plaintiff's claim would be barred in six years from the time of the accruing of the cause of action thereon.

Assignment of Errors on Defendant's Appeal.

1st. The court erred in overruling the demurrer by defendant to plaintiff's petition.

2d. The court erred in sustaining plaintiff's motion for change of venue.

3d. The court erred in holding plaintiff's claim not barred by the statute of limitations of the State of New York.

4th. The court erred in holding plaintiff's claim not barred by the statute of limitations of the State of Iowa.

117 5th. The court erred in holding that plaintiff was not estopped from prosecuting this suit by the former adjudication in the said former suit of The Iowa Homestead Company *vs.* The Des Moines Navigation & Railroad Company and others.

6th. The court erred in allowing any recovery in this suit.

C. H. GATCH,
Attorney for Defendant.

Endorsed: "Service of within accepted this 26th day of Jan'y, 1884. George Crane, att'y for Goodnow."

118 And said cause was duly submitted to the supreme court of Iowa upon the foregoing record, and said court, after due consideration, on the 23d day of April, 1884, filed its opinion reversing the judgment of the district court of Webster county, Iowa, said opinion being in the words and figures following, to wit:

EDWARD K. GOODNOW, Appellant, *vs.* GRACE H. LITCHFIELD.

Appeal from Webster district court.

Action in chancery for an accounting, and to recover for certain sums of money paid by plaintiff in satisfaction of taxes levied upon certain lands, the title whereof he, at the time, in good faith claimed, but which, by certain adjudications of the courts, was afterwards declared to be in defendant. The petition also claims a lien upon the lands, and its enforcement for the sum found due plaintiff. Upon the final hearing of the cause a decree was entered in favor of plaintiff for the amount of the taxes paid, with interest from the day of the commencement of this action, and establishing a lien which shall be binding upon each separate tract of land to the extent of the taxes paid thereon. From this decree plaintiff appeals. It is stated in the argument of counsel that defendant perfected a cross-appeal, but the abstract and amended abstract upon which the cause is submitted to this court do not show or aver such cross-appeal. The pleadings and facts of the case appear in the opinion.

George Crane, for appellant; G. H. Gatch, for appellee.

BECK, *J.*:

1. The plaintiff alleges in his petition that in 1863 the Dubuque & Sioux City Railroad Company conveyed certain lands, describing them, all situate in Webster county, to the Iowa
119 Homestead Company, a corporation organized under the laws of this State, which, in good faith, and in the belief that it held the title to the lands, paid the taxes assessed thereon from the date of the conveyance to the year 1872, amounting to the sum of $3,819.45; these taxes were paid as they became due for the years intervening between the dates named. It is averred that the defendant is the real owner of the lands of which the homestead company had no knowledge or notice until the year 1873; that defendant has paid no part of the taxes; that the county refuses to refund to plaintiff any part of the sums paid and that defendant,

as the legal owner of the lands, was justly bound to pay the taxes The petition alleges and shows that the Iowa Homestead Company has assigned and transferred to plaintiff its claim and cause of action arising upon the payments of the taxes. The relief prayed is for an accounting and a decree for the amount found thereon to be due plaintiff, which shall be made a lien upon the lands, and for general relief. The answer of the defendants admits the allegations of the petition as to the conveyance of the lands to the homestead company, and the title thereof being vested in defendant, and that she has not paid the taxes which plaintiff seeks to recover. Other allegations of the petition are denied. As a defense to the action the answer pleads a prior adjudication in an action between the homestead company, as plaintiff, and the defendant and her grantor, The Des Moines Navigation & Railroad Company and others, as defendants, finally determined by the Supreme Court of the United States in 1872. As further defenses the answer sets up the statute of limitations and alleges that all payments were made by plaintiff's assignor without the request or consent of defendant. An amended answer shows that, during all of the time in which the taxes in question were levied and paid, plaintiff's title to the lands were denied by the State of Iowa and the United States, and it was claimed the ownership of the lands vested in others under certain grants, and that even subsequent to the decision of the United States Supreme Court in the case of Walcott *v.* Des Moines Nav. & R. Co., 5 Wall., 681, whereby the title of the lands was settled in the defendant's grantor, the United States continued to claim that the title was transferred by other grants, and withheld certification of the lands under the grant by virtue of which defendant claims, whereby defendant has been deprived of the possession of the lands, which have been occupied by adverse claimants, whereby the defendant has suffered loss. Defendant, in an amended answer, alleges that plaintiff is not the real party in interest, the cause of action not having been transferred to him. Other allegations of the pleadings need not be recited. The death of defendant, Grace H. Litchfield, having been suggested, the administrator of her estate, Edwin C. Litchfield, was substituted as defendant, and as such appeared in the case. The action is triable *de novo* in this court.

2. We will proceed to the discussion of all the questions raised by the counsel of the respective parties, considering first those presented on the part of defendant. In view of the fact that we decide all questions discussed in the brief for defendant, it is not important to inquire whether there was a cross-appeal by that party. The appeal by plaintiff brings the case here for trial *de novo*, upon which all questions made by the respective parties may be decided.

It is first insisted that it is shown that plaintiff is not the real party in interest as to the claim involved in this suit, and is not, therefore, authorized to prosecute this action. It is shown by the amended abstract that this objection was raised by demurrer to the petition, and we also find that the objection was pleaded as a defense by the answer. It is not important in what manner the objection was first raised. It may be considered, whether raised in

one way or the other, and it is not insisted that the objection was raised by pleading one after demurrer; it is based upon the language of the assignment of the claim executed by the homestead company to plaintiff. The instrument, by proper words, transfers and
120 assigns the cause of action to plaintiff, and thereupon follows this language: "In consideration whereof, the said E. K. Goodnow hereby agrees to exercise reasonable care and diligence to enforce said claims, demands, or rights of action, and, after deducting all costs and expenses in so doing, to hold the proceeds or amount collected in trust for the use and benefit of the parties owning the same."

It is insisted by counsel for defendant that plaintiff acquires under this instrument nothing more than the power and right to collect the claims, and is not clothed with the title thereof. This is clearly an error. The assignment is absolute in form, vesting plaintiff with the title and property in the claims. The language above quoted clearly shows, however, that he is to hold the claims as a trustee. It cannot be doubted that a chose in action may be transferred to a trustee, and our statute (code, § 2544) clothes a trustee with the right and power to prosecute an action thereon in his own name. See Cottle *v.* Cole, 20 Iowa, 481; Rice *v.* Savery, 22 Iowa, 470.

3. Upon the application of plaintiff, the venue of the case was changed. The persons making affidavit, as required by the statute, state "that they are not related to the plaintiff in this action nearer than the fourth degree, nor do they, nor any of them, stand in the relation of servant, agent, or employé of said plaintiff; nor are they in any manner interested in the result or issues of this action." It is now insisted that this affidavit does not comply with the requirements of code, § 2590. In support of this position, Fairburn *v.* Goldsmith, 58 Iowa, 339, S. C. 12 N. W. Rep., 273, is cited. The affidavit in this case differs from the one held insufficient in that decision, which is construed to show that the three affiants are not collectively related to the applicant nearer than the fourth degree. In this case the affiants collectively declare that they are not so related. The language used would not be true if one of them were in the degree of relationship mentioned. In the other case the decision regards the persons as referred to by the affidavit collectively, and holds that the allegation of the affidavit would be true if one of them were related within the fourth degree—a very doubtful and nice distinction, to say the least of it. We think the distinction between the language of the affidavit in this case and the one interpreted in the other is obvious. We are not inclined to extend the rule of that case to language other than that to which it is applied in the decision.

4. It is next urged by counsel that the action is barred by the statute of limitations. This claim is based upon the position that the title of the land upon which the taxes paid by plaintiff were levied was finally settled in 1866 by the Supreme Court of the United States in Walcott *v.* Des Moines Nav. & R. Co., 5 Wall., 681. But this court has held in cases involving similar facts, and the title to lands resting upon the same grant under which defendant claims, that the title was not finally settled until 1873, by the decision of

the United States Supreme Court in Homestead Co. *v.* Valley R. Co., 17 Wall., 153. See Goodnow *v.* Stryker, 16 N. W. Rep., 486; S. C. 17 N. W. Rep., 506; Goodnow *v.* Moulton, 51 Iowa, 555; S. C. 2 N. W. Rep., 395. The question raised by counsel must be regarded as settled by these decisions. It is held in Goodnow *v.* Stryker, *supra*, that the statute of limitations did not begin to run until December, 1872, upon the decision of Homestead Co. *v.* Valley R. Co., *supra*.

5. It is argued by counsel for defendant that the evidence supports the defense of prior adjudication pleaded by defendant. The facts upon which he relies to support this position are as follows: In 1868 the Iowa Homestead Company brought an action in chancery against the Des Moines Navigation Company and others to quiet the title to the lands held by it under the grant to the Dubuque & Sioux City Railroad Company, of which the lands whereon the taxes in question were levied were originally a part. The defendant was not a party to this action. In addition to the specific relief indicated, the petition prayed that if the title was not found to be
121 in plaintiff the defendant should, by proper decree, be required to pay plaintiff the sums expended by it in the payment of taxes. This case was finally decided in the United States Supreme Court adversely to plaintiff, and it was held that recovery for taxes paid could not be had. See Homestead Co. *v.* Valley R. Co., *supra*. It is shown that, although defendant was not a party to that action, she contributed to the payment of the expenses of its defense, and that her agent had knowledge of the pendency of the action. It is shown by an agreed statement of facts that defendant held title to the land in 1863.

It appears from the foregoing statement that defendant had no such interest in the action that the decision and judgement therein would bind her. It cannot be claimed that had the judgment been against the defendants that she would have been bound thereby, nor does it appear that any relation of agency or tenancy existed between her and the defendants or any of them which authorized them to defend the suit for her benefit. While one of the defendants was probably her grantor, yet she had held the title from a time anterior to the payment of the taxes in controversy in this case. No recovery could have been had against any of them for the amounts paid upon the taxes on her land. Therefore she could not have been held liable over to the defendants or any one of them. She, therefore, had no such interest in the case nor liability on account of any judgment that was or could have been entered in it, which would have estopped her to deny the judgment. It is a familiar rule that estoppels by judgments must be mutual, and that one party cannot be bound if the other is not.

Counsel for defendant in support of his position cites Chicago *v.* Robbins, 2 Black, 418. But the party held to be bound by the judgment was liable over to the party against whom the judgment was rendered. No such liability on the part of defendant exists in this case. McNamee *v.* Mooreland, 26 Iowa, 96, is also cited. But the party to the action was either a tenant or grantee of the party

pleading the estoppel, and doubtless had the right to recover against him. Nothing of the kind is in this case. Counsel on this point cite Conger *v.* Chilcote, 42 Iowa, 18, in which the relation of agency existed between the party prosecuting the suit and the person sought to be bound by the estoppel. We conclude that the defense of former adjudication is not established.

6. It is insisted that the payment of taxes in controversy was voluntarily made with full knowledge of defendant's claim of title under the belief, through a mistake of law, that the title of the land was in the homestead company, and that, therefore, plaintiffs cannot recover. But we have repeatedly held in like cases that under the circumstances disclosed by the record plaintiff may recover. It must be regarded as the settled rule of this court and is not now open for discussion. Goodnow *v.* Stryker, *supra;* Goodnow *v.* Wells, 54 Iowa, 326; S. C., 6 N. W. Rep., 527; Goodnow *v.* Litchfield, 59 Iowa, 226; S. C., 13 N. W. Rep, 86; Goodnow *v.* Stryker, 14 N. W. Rep., 345; Same *v.* Same, 16 N. W. Rep., 486; Same *v.* Same, 17 N. W. Rep., 506.

7. The branch of the case to be next considered involves the right of plaintiff to recover interest upon the payments made in satisfaction of the taxes and the dates at which interest should begin. There is no statute of this State expressly declaring that interest shall be paid except upon judgments and decrees. Code, § 2077, fixes the rate of interest upon certain classes of contracts and for money due or to become due in certain cases, but does not in express words declare that interest is collectible thereon, but under the law as declared by the courts of this country, and recognized by this court, upon all debts interest is chargeable unless exempted therefrom by contract. When money is paid for the use of another, imposing an obligation upon the party who receives the benefit of the payment, to reimburse the party paying interest from the day of payment is recoverable. Gibbs *v.* Bryant, 1 Pick., 118; Renss. Glass Factory *v.* Reid, 5 Cow., 587; Sims *v.* Willing, 8 Serg. & R., 103; Milne
122 *v.* Rempublicam, 3 Yeates, 102; Ilsley *v.* Jewett, 2 Mete., 168. In this case defendant enjoyed the benefits of the payments made by plaintiff from the very day the payments were made. Her lands thereby were relieved from tax sales and the attending penalties, and they were preserved to her against titles which would have been perfected under such sales. These benefits began on the very day of payments. The law will hold plaintiff liable for these advances, for the reason that she ought—*ex æquo et bono*—to reimburse defendant with interest from the day of payment. This conclusion we announced in Goodnow *v.* Stryker, *supra.*

8. As the payments were made for the protection of the land which was afterwards adjudged to belong to defendant, equity will declare and enforce a lien thereon for the sum advanced. This is in accord with the rules prevailing in that forum which enforce liens for expenditures made for the protection and preservation of property. It would surely be against good conscience to deny to one who had expended his money for the preservation of the property of another a remedy against that property, and subject him to

the loss of the sums he has advanced. We have held that in like cases plaintiffs were entitled to liens. Goodnow *v.* Moulton, *supra*; Goodnow *v.* Stryker, *supra*. The plaintiff, in our opinion, is entitled to a lien upon all the lands collectively for the gross amount of the payments for taxes, with interest, as above pointed out. We discover no ground upon which we can support the conclusion of the court below that each tract of the lands is subject to a lien for no greater sum than the taxes levied thereon, with interest. Plaintiff cannot enforce the lien of the county for the taxes, nor is he subrogated to the rights of the county. That lien and those rights were discharged and satisfied by the payment of the taxes. The lien to which he is entitled arises in equity, which will perfectly protect him without subjecting him to delay, expense, and probable defeat of his equities, to some extent, by imposing the lien upon the separate tracts of land. Defendant, as she is bound by the law and good conscience to pay the sums expended by plaintiff, can interpose no objection to the enforcement of the judgment against part or all of the lands. As she is found to be the debtor of plaintiff, she ought not to dictate a remedy which may fall short of full relief. In good conscience she ought to pay plaintiff without an execution, and in that case the character and extent of the lien would be of no concern to her. It is not made to appear that any other parties are interested in the lands.

The decree of the court below will be reversed and the cause remanded for a decree in accord with this opinion, or, at the option of plaintiff, such a decree may be entered in this court.

123 And the plaintiff Goodnow, electing to take decree in the supreme court in accordance with the foregoing opinion, the following proceedings were had and duly entered of record as of the regular June term, 1884, of said supreme court:

"*Final Judg't and Decree.*

EDWARD K. GOODNOW
vs.
GRACE H. LITCHFIELD, Edwin C. Litchfield, Substituted as Administrator. } 10769.

This cause coming on for final hearing, Edward K. Goodnow appearing by George Crane, his attorney, and the said Edwin C. Litchfield, administrator of the estate of Grace H. Litchfield, deceased, appearing by C. H. Gatch, his attorney, and the court having
124 duly considered the evidence, the issues, and the arguments of counsel, finds that the plaintiff is entitled to recover the principal sums shown to have been paid by plaintiff's assignor, and interest thereon at the rate of six per cent. per annum from the times such payments were made, and that plaintiff is entitled to a lien upon the land described in the petition to secure the payment of the sums recovered.

It is therefore ordered and decreed that the plaintiff have and recover of and from the defendant, Edwin C. Litchfield, as admin-

istrator of the estate of Grace H. Litchfield, deceased, the sum of six thousand one hundred and thirty-six & $\frac{37}{100}$ dollars, and interest thereon at the rate of six per cent. per annum from the 13th day of March, 1883, and costs of suit, taxed at one hundred and fifty-three & $\frac{90}{100}$ dollars; and this decree is hereby made a special lien on the following-described land from April 28th, 1873, to wit:

125 The west half of northeast quarter, southeast quarter, and west half of section 1, township 87, range 29; all of section 35, township 88, range 29; northwest quarter of northwest quarter of section 5, township 88, range 28; east half section 5, all of section 7, west half of section 15, township 88, range 27, all in Webster county, Iowa.

It is further ordered that a special execution be issued, and that said lands, or so much thereof as may be necessary, be sold thereunder according to the provisions of law, and the proceeds of such sale applied in payment of this decree."

And afterwards a supplemental decree or certificate was allowed upon motion of defendant (pl'ff in error), and the same is duly entered of record as the regular June term, 1884, of said court.

126 "June Term, 1884.

EDWARD K. GOODNOW
vs.
EDWIN C. LITCHFIELD, Adm'r of Grace H. Litchfield, Deceased. } 10769.

And now, on the application of the defendant, Edwin C. Litchfield, administrator of Grace H. Litchfield, deceased, it is certified by the court here and ordered to be made part of the record herein that by the answer of the defendant in defendant's assignment of errors in the additional abstract, and on the hearing in said cause, the defendant claimed immunity from the entire demand and claim of plaintiff on the ground that, as was claimed, the same demand and claim had been adjudicated against plaintiff's assignor, The Iowa Homestead Company, by the Supreme Court of the United States in the case of The Iowa Homestead Company against

127 The Des Moines Navigation and Railroad Company and others, at the October term thereof, A. D. 1872, to which case it was claimed the said Grace H. Litchfield, though not named as such in the record, was a party defendant in such sense as to have been bound by, and entitled to the benefits of, the adjudication therein, and that our decision herein was and is against the immunity so claimed.

And it is further certified and made part of the record herein that by defendant's answer, and on the hearing in said cause, defendant claimed immunity from said entire claim and demand, because, as was claimed, the alleged cause of action, not having accrued within six years immediately preceding the commencement of the action, was barred by the New York statute of limitations, and that to determine whether or not it was so barred it

128 became material and necessary to decide whether or not the

decision of the Supreme Court of the United States in the case of Samuel G. Wolcott against The Des Moines Navigation and Railroad Company was a final determination of the question therein decided in order to determine when the plaintiff's cause of action accrued, and that our decision herein was and is that said decision was not a final determination of said question, and was and is against the immunity so claimed because of our said decision that said determination was not final.

Given under my hand, at Cedar Rapids, this 19th day of June, 1884.

JAS. H. ROTHROCK,
Ch. Justice Sup. Court of Iowa."

129 On the 15th day of July, 1884, there was filed in the office of the clerk of said court a writ of error, and the original is hereto attached and returned herewith, a true copy thereof being retained here.

And the original citation, duly served, is hereto attached and returned herewith, a true copy thereof being retained in the office of said clerk.

130 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the supreme court of the State of Iowa, Greeting:

Because in the record and proceedings as also in the rendition of the judgment of a plea which is in said supreme court before you, between Edward K. Goodnow and Edwin C. Litchfield, administrator of Grace H. Litchfield, deceased, wherein was drawn in question the validity of the authority exercised under the State of Iowa, on the ground of its being repugnant to the laws of the United States, and the decision was in favor of the validity of such authority, and wherein certain rights, privelages, and immunities were claimed under a certain judgment of the Supreme Court of the United States and authority exercised under the United States, and the decision was against the rights, privelages, and immunities so claimed, a manifest error hath happened, to the great damage of the said Edwin C. Litchfield, administrator, as by his complaint

131 appears, we, being willing that error, if any hath been, shall be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, *of* the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and custom of the United States should be done.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, the 15th day of July, A. D. 1884.

[Seal U. S. Circuit Court, Southern District Iowa.]

E. R. MASON,
Clerk U. S. Circuit Court, S. Dist. of Iowa.

Approved July 14th, 1884.
JAS. H. ROTHROCK,
Chief Justice of the Supreme Court of Iowa.

[Endorsed:] 10769. E. K. Goodnow *vs.* Grace H. Litchfield, dec'd, Edwin C. Litchfield, adm'r. Writ of error. Filed July 15, 1884. G. B. Pray, clerk sup. court.

132 The United States of America to Edward K. Goodnow, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Iowa, wherein Edwin C. Litchfield, adm'r of Grace H. Litchfield, deceased, is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable James H. Rothrock, chief justice of the supreme court of the State of Iowa, this 14th day of July, in the year of our Lord eighteen hundred & eighty-four.

[Seal of the Supreme Court of Iowa.]

JAMES H. ROTHROCK,
Chief Justice Supreme Court of Iowa.

133 [Endorsed:] 10767. Goodnow *vs.* E. C. Litchfield, adm'r. Citation.

Due service of the within is hereby acknowledged this 16th day of July, 1884.

GEORGE CRANE,
Att'y for E. K. Goodnow.

134 On the 15th day of July, 1884, there was filed in the office of the clerk of said court a writ of error bond, which remains lodged in said office. Said bond, with the endorsements thereon, is in the words and figures following, to wit:

Know all men by these presents that we, Edwin C. Litchfield, administrator of Grace H. Litchfield, deceased, and James Callanan, security, are held and firmly bound unto Edward K. Goodnow in the full and just sum of one thousand dollars, to be paid to the said Edward K. Goodnow, his executors or administrators; to which